

DB7LCHE1

Trial

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 CHEVRON CORPORATION,

4 Plaintiff,

5 v.

11 Cv. 0691 (LAK)

6 STEVEN R. DONZIGER, et al.,

7 Defendants.

8 -----x

November 7, 2013  
9:37 a.m.

10 Before:

11 HON. LEWIS A. KAPLAN

District Judge

12 APPEARANCES

13 GIBSON, DUNN & CRUTCHER LLP  
14 Attorneys for Plaintiff

15 BY: RANDY M. MASTRO  
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BY: JULIO C. GOMEZ

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Trial

(Trial resumed)

THE COURT: Good morning, all.

MR. MASTRO: Good morning, your Honor.

THE WITNESS: Good morning.

THE COURT: I hope it's not raining in here, Andy.

Good morning, Mr. Zambrano. You're still under oath.

Let's continue, folks.

MR. BOOTH: Yes, your Honor. Good morning.

THE WITNESS: Good morning. Thank you.

NICOLAS ZAMBRANO, resumed.

CROSS-EXAMINATION (cont'd)

BY MR. BOOTH:

Q. Good morning, Dr. Zambrano.

A. Good morning.

Q. I want to talk to you this morning about the process you went through of actually dictating the judgment in the Ecuadorian Lago Agrio case.

First of all, who actually typed the words into the new computer in your office?

A. Ms. Calva.

Q. Did you ever type any of the judgment in the Lago Agrio Chevron case yourself into the computer?

A. Yes.

Q. Will you estimate for us how much of the judgment in the Chevron Lago Agrio case Ms. Calva typed compared to you?

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1 A. Could you please clarify the percentage that I typed or the  
2 percentage that Ms. Calva typed?

3 Q. The percentage that Ms. Calva typed, please.

4 A. Between 80 and 85 percent.

5 Q. Other than Ms. Calva and you, did anyone else type any of  
6 the words in the Lago Agrio Chevron judgment?

7 A. No.

8 Q. Now, I think you described or used the term dictating in  
9 describing the writing of the judgment. I want to ask you to  
10 describe that process. Tell the Court, please, how you went  
11 about dictating the judgment in this case.

12 A. Yes. From the cases that I had, from the cuerpos, from the  
13 notebooks that I had pertaining to this case, from the notes  
14 that I had gathered, from all the documentation that was  
15 available to me, I proceeded to dictate it and I would form the  
16 concept, the idea, and that way it would be gathered in the  
17 computer, collected in the computer.

18 Q. And when you dictated, did you dictate into a machine?

19 A. What do you mean dictated into a machine?

20 Q. When you dictated as you just described, did you dictate  
21 into any type of machine or did you dictate directly to  
22 Ms. Calva?

23 A. I would dictate directly to Ms. Calva.

24 Q. Can you -- sorry.

25 Will you please describe for the Court when you talk

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1 about notes and pages from the cuerpos, will you please give  
2 the Court some idea of how much information you're talking  
3 about?

4 A. A lot of documentation. I had the cuerpos scattered,  
5 notes, my notations, the documentation. I would grab one, I  
6 would refer to it, and I would dictate parts of a document. I  
7 would place the page where it had been found, I would cite.

8 Q. Please tell the Court how you decided what documents to use  
9 in your dictation.

10 A. Those documents were relevant to the environmental trial  
11 that was being heard, from the evidence gathered during the  
12 trial, and that in the record in the trial.

13 Q. And, sir, will you tell the Court whether it was your  
14 decision what documents you used or did someone else tell you  
15 what documents to use?

16 MR. MASTRO: Objection to form, compound.

17 THE COURT: Sustained.

18 Q. Will you please tell the Court who made the decision what  
19 documents you would use to dictate the judgment.

20 A. I always made a decision of taking this or that document.  
21 And all these references, all these citations, I have a record  
22 for them in the judgment.

23 Q. Dr. Zambrano, did you ever show Ms. Calva any document for  
24 her to type from?

25 A. No.

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1 MR. BOOTH: Your Honor, may I approach?

2 THE COURT: You may.

3 MR. MASTRO: There's no English. Your Honor, this is  
4 in Spanish. We have typically proceeded on the basis that  
5 there's a certified translation of documents in English when  
6 we're going to present a witness with Spanish.

7 MR. BOOTH: May I lay some foundation, your Honor?

8 THE COURT: You can try. Yes, go ahead.

9 Q. Dr. Zambrano, I've handed you what has been marked as  
10 Defendant's Exhibit DX1554. Would you look at that document,  
11 please.

12 First of all, do you recognize what that document is?

13 A. Yes. This is a jurisprudence from the Supreme Court of  
14 Justice.

15 MR. BOOTH: And, your Honor, we would move into  
16 evidence Defendant's Exhibit 1554, not for the truth of the  
17 matter asserted. I apologize there's no English translation.  
18 I will not go into the document in light of the fact there is  
19 no English translation. I just couldn't find one.

20 THE COURT: What's the point of it?

21 MR. BOOTH: I can discuss it at side bar if you'd  
22 like. I don't want to say it in front of the witness.

23 THE COURT: Secret code would be just about as useful.

24 MR. BOOTH: Because, your Honor, you didn't want me to  
25 say things in front of the witness and I'd rather not say it in

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1 front of the witness.

2 THE COURT: All right. Come up to the side bar.

3 (At the side bar)

4 THE COURT: You know, first of all, right at the  
5 bottom it seems to indicate that this is something you printed  
6 off Lexis.

7 MR. BOOTH: Yes, your Honor.

8 THE COURT: So.

9 MR. BOOTH: There is no English. I mean we couldn't  
10 find any English translation of it and we didn't have time.

11 THE COURT: What's the point of this exercise?

12 MR. BOOTH: The point of it, your Honor, is that this  
13 is a common source for parts of the judgment. In other words,  
14 this is there are pages in here that he -- who the author of  
15 the judgment dictated portions of. And I don't know that -- I  
16 think it's probably not fair for me to go into that since there  
17 is no English translation, but I do want to identify the  
18 document and have it in evidence not for the truth of the  
19 matter asserted.

20 I will remind the Court that much of the expert  
21 reports in the case establish the comparison of language used  
22 Spanish similarities. Again, we're not offering this to show  
23 that it's right or what they argued in English or anything but  
24 the case in English, but in terms of matching up the  
25 similarities.

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1 THE COURT: What exactly is the objection if there is  
2 one?

3 MR. MASTRO: Your Honor, the objection, in addition to  
4 the fact that I can't read it so I can't at this point  
5 knowledgably be able to question the witness on it, more  
6 importantly is relevance. This is probative of nothing. He  
7 got this off of Lexis and Mr. Fajardo and Mr. Donziger, writing  
8 the judgment back home in the comfort of their homes, could  
9 have pulled this off Lexis too. This proves nothing that they  
10 pulled a source document off of Lexis from 2002, proves  
11 nothing. And it's misleading to have this come in under these  
12 circumstances when it is probative of nothing. It doesn't show  
13 he wrote the judgment.

14 MR. BOOTH: It goes to a specific issue. On the first  
15 day of the testimony, first of all, the fact that he has an  
16 argument against it doesn't mean it's not probative.

17 Secondly, on the first day there was a big discussion  
18 about French law and how in the world can anyone cite French  
19 law because you'd have to speak French because that's the only  
20 language French law would ever be discussed in. In this case  
21 it discusses French, Colombian, Argentine law.

22 MR. GOMEZ: In fact, your Honor, that various passage  
23 appears verbatim in the sentencia.

24 THE COURT: I'm sorry?

25 MR. GOMEZ: The very passages about discussions of

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1 French law also appear verbatim in the judgment. And we do  
2 have the pages that are similar translated. We have those four  
3 or five pages translated in English. We do not have the entire  
4 thing translated.

5 MR. MASTRO: Your Honor, also haven't laid a proper  
6 foundation. There's nothing that says he even knows what this  
7 document is or would have any recollection of it.

8 MR. BOOTH: He did recognize it. He said I recognize  
9 it.

10 MR. MASTRO: Because you put it in front of him. If  
11 you asked him --

12 THE COURT: The foundation is inadequate. There's  
13 nothing on the face of this that even establishes that it is  
14 what he says it is. I don't know if it's a decision of the  
15 Supreme Court of Ecuador. For all I know, somebody typed this  
16 up in his basement and he looks at it and he said, well, it  
17 looks like a decision of the Supreme Court of Ecuador. So I  
18 think you have to do a little better than that.

19 MR. MASTRO: Thank you, your Honor.

20 (In open court)

21 MR. MASTRO: Just before we continue, there is some  
22 highlighting on the first page of what we received. Mr. Booth  
23 had highlighting on other pages. I don't know whether the  
24 witness's has any highlighting other than the first page.

25 MR. BOOTH: There shouldn't be.



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1 THE COURT: I'm looking at it in front of the witness  
2 and it does have the highlighting.

3 MR. MASTRO: I meant after the first page.

4 THE COURT: After the first page.

5 MR. MASTRO: Which is what Mr. Booth referred to at  
6 the side bar.

7 THE COURT: The copy I was given does not.

8 MR. MASTRO: I see only the highlighting on the first  
9 page of what was handed to the witness, your Honor. Thank you,  
10 your Honor.

11 Thank you, Mr. Booth.

12 MR. BOOTH: May I continue, your Honor?

13 THE COURT: Yes.

14 BY MR. BOOTH:

15 Q. Dr. Zambrano, do you recognize this document or what -- let  
16 me ask -- can you tell us, do you recognize this case?

17 A. Yes. I recall more or less.

18 Q. And in dictating your judgment in the Lago Agrio Chevron  
19 case, did you rely on Ecuadorian law at all?

20 A. Yes. This is one of the case law that was very useful to  
21 me in the Ecuadorian case.

22 Q. Let me ask that question. Did you, in drafting your  
23 judgment in the Lago Agrio Chevron case, actually, can you tell  
24 us whether or not you relied on this particular case?

25 A. Yes.

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1 Q. Do you know the name, can you tell us the name of this case  
2 or will tell us the name of this case, I should say?

3 A. Well, this was a complaint brought by the communities of  
4 Esmeraldas Province against Petroecuador.

5 MR. BOOTH: Your Honor.

6 MR. MASTRO: Objection, move to strike.  
7 Nonresponsive.

8 THE COURT: The answer is stricken. It is  
9 nonresponsive.

10 Q. Dr. Zambrano, is what you just told us the way the case is  
11 named in Ecuador?

12 MR. MASTRO: I haven't been objecting to leading, your  
13 Honor, but it's leading. Objection.

14 MR. BOOTH: Let me ask it a different way.

15 Q. Dr. Zambrano, will you tell the Court how this case is  
16 referred to in Ecuador?

17 THE COURT: If indeed it is a case.

18 A. This case is so unique because it was one of the first ones  
19 dealing with environmental pollution and this is definitely  
20 where one observes that the burden of proof is inverted.

21 MR. MASTRO: Objection, your Honor. Move to strike.

22 THE COURT: Granted.

23 Q. Sorry, Dr. Zambrano, let me try to ask a question.

24 In Ecuador, first of all, I think you've answered  
25 this, but let me ask you, is this -- does this document refer

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1 to a particular case in Ecuador?

2 A. Yes.

3 Q. And when this case is referred to in Ecuador, what do  
4 people in Ecuador name or call this case?

5 A. I don't recall exactly.

6 Q. Earlier when you were describing the parties to the case --

7 THE COURT: Dr. Zambrano, have you in conversation or  
8 in a document you wrote ever referred to this case anywhere?

9 THE WITNESS: Yes, in the judgment.

10 THE COURT: And when you did so, what did you refer to  
11 the case as?

12 THE WITNESS: I don't recall right now.

13 THE COURT: In Ecuadorian practice, is the party who  
14 brings a case the plaintiff?

15 THE WITNESS: Plaintiff.

16 THE COURT: And is the party who is sued referred to  
17 as a defendant?

18 THE WITNESS: Yes.

19 THE COURT: And is it customary on your part in  
20 referring to a case in Ecuador to refer to it by the name of  
21 the plaintiff and the name of the defendant?

22 THE WITNESS: On many occasions I refer to it that way  
23 and I made the citation.

24 THE COURT: And you referred to the case that was  
25 before you in Ecuador as Aguinda against or versus Chevron,

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1 true?

2 THE WITNESS: It is more commonly known as Chevron,  
3 but it is also perfectly known as Aguinda v. Chevron.

4 THE COURT: All right. And this document that the  
5 lawyer placed before you, Defendant's Exhibit 1554, assuming it  
6 is in fact a judicial decision, what is the name of it?

7 THE WITNESS: I don't recall right now.

8 THE COURT: Okay. Go ahead, Mr. Booth.

9 MR. BOOTH: Thank you, your Honor.

10 Q. Dr. Zambrano, do you recall the name of the plaintiffs in  
11 this case, the case before you?

12 A. It was an Esmeraldan town, a community of Esmeralda.

13 Q. And do you recall the name of the defendant in this case?

14 A. Petroecuador.

15 Q. And, Dr. Zambrano, if you look at the highlighted portion  
16 on the first page where it says Corte Suprema de Justicia, what  
17 court is that?

18 A. That is the court of Esmeralda province. Excuse me. The  
19 Corte Suprema is what is now the current national court. There  
20 is no longer a Supreme Court.

21 Q. And where it says Primer a Sala de lo Civil y Mercantil,  
22 what does that mean, if anything?

23 A. That is a specialized chamber of the national court.

24 Q. Is the national court Corte Supreme de Justicia, is that  
25 the highest court in Ecuador?

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1 A. This is the cassation entity. This is maximum entity.

2 Q. I don't understand maximum. Can you explain what that  
3 means?

4 THE INTERPRETER: Interpreter correction: Highest.

5 MR. BOOTH: I understand now. Thank you.

6 Your Honor, we would move into evidence Defendant's  
7 Exhibit 1554 not for the truth of the matter asserted and  
8 subject if, obviously, if the Court wants us to prove up  
9 somehow that it is what we've said it is, I'm not going to use  
10 it any more today, but we would move it into evidence.

11 THE COURT: Well, if you're not going to use it any  
12 more today, well let me hear from Mr. Mastro.

13 MR. MASTRO: I have an objection, your Honor, and I'd  
14 like to come to the side bar about it.

15 (Continued on next page)

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1 (At the side bar)

2 THE COURT: Mr. Mastro.

3 MR. MASTRO: I object, your Honor. I still think we  
4 have the same foundation issues and relevance issues. We would  
5 now prove up that in fact this was a case that was cited by  
6 Chevron in its briefs in the case. This isn't something this  
7 judge came up with. He showed him the document. The guy reads  
8 the first page and it took him almost half an hour to get out  
9 some description in a general sense of who the plaintiff was.

10 THE COURT: Could you be a little more concise.

11 MR. MASTRO: I don't think they have either laid  
12 foundation or this is relevant at all or probative of anything.  
13 So I object.

14 THE COURT: Do you dispute that this is what they seem  
15 to claim it is, that is to say, a reported decision of this  
16 court in the province of Esmeraldas?

17 MR. MASTRO: We do not dispute that. I can't read it  
18 because it's in Spanish, but it looks to be that case. But to  
19 us it's probative of nothing to have that come into evidence  
20 here.

21 THE COURT: The argument, I take it, from Mr. Booth --  
22 and he'll correct me if I'm wrong -- is that there's language  
23 in the decision that appears also in Plaintiff's Exhibit 399.

24 Is that right, Mr. Booth?

25 MR. BOOTH: Yes, your Honor.

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1 THE COURT: And that is intended to prove that there  
2 was a source either in the record before this judge or  
3 otherwise properly available to him from which that particular  
4 passage, whatever it is, could have come. Is that correct?

5 MR. BOOTH: Yes, your Honor.

6 THE COURT: All right.

7 MR. BOOTH: More as well, but, yes, that's correct.

8 THE COURT: What else?

9 MR. GOMEZ: In particular, your Honor, the point that  
10 that particular passage makes reference to French law, which  
11 was an issue that was raised by the plaintiffs as demonstrating  
12 the witness's lack of authorship for his failure to speak  
13 French law. If the source of the French law cited in the  
14 sentencia comes from an Ecuadorian court decision, then it  
15 undermines the argument that his lack of facility with the  
16 French language --

17 THE COURT: It might or it might not depending on  
18 what's in the decision and what he wrote, if he wrote anything.

19 MR. MASTRO: Right.

20 THE COURT: But that's another issue.

21 MR. MASTRO: And there multiple references to French  
22 law in the decision, your Honor, that are unrelated to this  
23 case.

24 THE COURT: All right. Look, if there is no dispute  
25 as to authenticity, that is, as to the assertion that this is a

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1 report of a decision by this court in the Province of  
2 Esmeraldas, then I don't see why I shouldn't take it for what  
3 it's worth. But the defense is going to have to provide an  
4 English translation.

5 MR. BOOTH: Absolutely.

6 MR. MASTRO: Exactly, your Honor. That's what I was  
7 going to say.

8 THE COURT: While on the subject of translation,  
9 Plaintiff's Exhibit 400 and the English part of the  
10 clarification, my recollection is that at least as to the  
11 first, that is to say, the judgment, and possibly as to the  
12 second, that is to say, the causation, I insisted early in this  
13 litigation that the parties attempt to agree a translation.  
14 And my memory is that at least as to the judgment you did.

15 MR. MASTRO: That's correct, your Honor.

16 MR. GOMEZ: That's correct.

17 THE COURT: Now, is that true also with respect to the  
18 clarification which --

19 MR. MASTRO: I believe so, your Honor.

20 MR. GOMEZ: Yes, I believe so.

21 MR. MASTRO: What we submitted.

22 THE COURT: Am I being told by all counsel that  
23 Plaintiff's 399, 400, and I think it's 429 to 431 is the  
24 clarification stuff, the English translations that are in  
25 evidence are in fact the translations that were agreed among



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1 all counsel?

2 MR. MASTRO: Yes, your Honor.

3 MR. GOMEZ: Yes, your Honor.

4 MS. LITTLEPAGE: Yes.

5 THE COURT: That clears that up. Okay.

6 (In open court)

7 THE COURT: The parties are agreed that there is no  
8 dispute over the fact that Defendant's Exhibit 1554 is a copy  
9 of a report of a judicial decision by the Superior Court of  
10 Justice of Esmeraldas. It is offered not for the truth of  
11 anything contained therein, but simply for the fact of what it  
12 contains, the statements it contains, not for the truth.

13 MR. BOOTH: Your Honor, may I. I apologize for  
14 interrupting. I don't think that's what he called it. This is  
15 from the national court, not from the local court.

16 THE COURT: Is that the agreement?

17 MR. MASTRO: Yes, your Honor.

18 THE COURT: All right. I stand corrected as to that.  
19 It's from the national court. It's received not for the truth  
20 of the matters asserted, and it's received subject to the  
21 condition that I be provided with an English translation.

22 (Defendant's Exhibit 1554 received in evidence)

23 THE COURT: Let's move along.

24 MR. BOOTH: Yes, your Honor.

25 Q. Dr. Zambrano, will you tell the Court whether the judgment

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1 in the Lago Agrio Chevron case dated February 14, 2011 is or  
2 was your decision as the judge on that case?

3 MR. MASTRO: Objection, asked and answered, your  
4 Honor.

5 THE COURT: I think so.

6 Q. Will you tell the Court whether in deciding the Lago Agrio  
7 Chevron case you were influenced by any promises or threats  
8 from anybody?

9 MR. MASTRO: Objection to form, leading, asked and  
10 answered.

11 THE COURT: Overruled.

12 A. No.

13 MR. BOOTH: Thank you, your Honor. No more questions.  
14 Thank you, Dr. Zambrano.

15 THE COURT: Okay. Redirect. I'm sorry.

16 Mr. Gomez, do you want to examine?

17 MR. GOMEZ: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MR. GOMEZ:

20 Q. Good morning, Dr. Zambrano.

21 A. Good morning.

22 Q. Dr. Zambrano, how old are you?

23 A. I will turn 58.

24 Q. Where were you born?

25 A. In Guayaquil, Ecuador.

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1 Q. Where did you grow up?

2 A. In Guayaquil.

3 Q. What did your parents do for a living, Dr. Zambrano?

4 A. Working.

5 Q. What did they work in?

6 A. My father was the administrator of the water company. And  
7 my mother worked in the national hygiene institute.

8 Q. When you were growing up, were there any lawyers in your  
9 family, sir?

10 A. No.

11 Q. Were you the first person in your family to become a  
12 lawyer?

13 A. Yes.

14 Q. Why did you choose to become a lawyer, sir?

15 A. Because I liked to behave with probity and always with the  
16 truth.

17 Q. What do you enjoy most about the practice of law?

18 A. To try to give each person what is his or hers.

19 Q. What degrees do you hold, sir, that allow you to practice  
20 law in Ecuador?

21 A. Bachelor's of political and social sciences, a degree as an  
22 attorney for the courts of the republic, a higher degree in  
23 fundamental and constitutional rights, and a specialization in  
24 criminal law and indigenous justice.

25 Q. When did you obtain each of those degrees, sir?

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1 A. The bachelor's degree in 1980; the attorney degree, the  
2 attorney degree in 1982; the certification in 2006, if I'm not  
3 mistaken; and the specialization in 2007.

4 Q. What institution bestowed these degrees on you, sir?

5 A. The bachelor's degree and the attorney's degree, it was  
6 conferred by the State University of Guayaquil; the  
7 certification by the State University of Guayaquil; and the  
8 certification, the specialization by the Autonomous University  
9 of the Andes.

10 Q. Where is that last university located?

11 A. In the city of Ambato.

12 Q. How long did you practice law before becoming a prosecutor,  
13 sir?

14 A. May I answer with an explanation?

15 Q. Absolutely.

16 THE COURT: Well, let's back up.

17 Did you, sir, before you became a prosecutor practice  
18 law?

19 THE WITNESS: Yes.

20 THE COURT: Would you describe for us what you meant  
21 in saying that you practiced law, what did you do and for whom?

22 THE WITNESS: Yes. Initially I was in the Air Force.  
23 And while there, even though I was a secretary and a prosecutor  
24 of the criminal court of the second Air Force area when I was  
25 authorized to practice this profession outside the military

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1 institution, but I did begin to practice law once I left the  
2 Air Force. And during that time, that was for about two or  
3 three years, if we add all this, it comes to about six, about  
4 nine years, more or less.

5 THE COURT: Excuse me, sir.

6 So is it accurate that you were in the Air Force for  
7 six or seven years; is that right?

8 THE WITNESS: Six years approximately.

9 THE COURT: All right. And is it correct that during  
10 that period, you to some extent engaged in the practice of law  
11 outside of the Air Force?

12 THE WITNESS: I did practice it, but currently  
13 military personnel cannot practice law.

14 THE COURT: When you were in the Air Force, were you  
15 permitted to practice law outside the Air Force?

16 THE WITNESS: Indeed I had to practice it because the  
17 civil matters I would have to, to conduct as an advisor of the  
18 members of the institution.

19 THE COURT: What institution?

20 THE WITNESS: The Air Force in its totality, the  
21 second Air Force area, zone.

22 THE COURT: Am I correct in understanding that while  
23 you were in the Air Force, you sometimes represented military  
24 personnel in matters outside of the Air Force; is that  
25 accurate?

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1 THE WITNESS: Yes.

2 THE COURT: And other than representing members of the  
3 Air Force, did you engage in the practice of law outside of the  
4 Air Force while you were in the Air Force?

5 THE WITNESS: In some cases.

6 THE COURT: How much of your time while you were in  
7 the Air Force did you spend representing or advising people in  
8 legal matters where the people who you advised or represented  
9 were not members of the military?

10 THE WITNESS: When a member of the Air Force -- well,  
11 let's see. When a relative of theirs needed some sort of legal  
12 assistance, even though they were not members of the Air Force,  
13 I would give them legal advice.

14 THE COURT: Now, after you left the Air Force, if I  
15 understand you accurately, you engaged in the practice of law  
16 for two or three years before you became a prosecutor; is that  
17 right?

18 THE WITNESS: Yes.

19 THE COURT: Describe the nature of that practice you  
20 did, please.

21 THE WITNESS: Different cases.

22 THE COURT: What percentage of them were criminal?  
23 Approximately.

24 THE WITNESS: In practicing my profession, I could see  
25 all kinds of cases. I couldn't give you an estimate. It's

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1 different from having a specific specialty.

2 THE COURT: That's true here too, Mr. Zambrano. But  
3 were you principally a practitioner on behalf of defendants in  
4 criminal cases or not when you were in private practice after  
5 you left the Air Force?

6 THE WITNESS: No. Civil cases and criminal cases.

7 THE COURT: What kind of civil cases did you handle  
8 when you were in private practice after the Air Force?

9 THE WITNESS: In fact I was in charge of  
10 representation at the Rivadeneira, the Rivadeneira Consultora,  
11 consulting firm Rivadeneira. It's three companies, Coequipos,  
12 and Brisas del Rio. It's three different companies. Those  
13 were exclusively civil matters.

14 THE COURT: And what kind of civil matters?

15 THE WITNESS: It was disputes regarding housing,  
16 nonpayment of rents.

17 THE INTERPRETER: I need to look in my dictionary,  
18 your Honor.

19 THE WITNESS: Statute of limitations on property  
20 acquisitions, effective possession of property, etc.

21 THE COURT: What does "etc." include, sir?

22 THE WITNESS: Labor and different issues that would  
23 come up and the manager would have me take care of them.  
24 Collection matters, as well.

25 THE COURT: So this was all for these three companies;

DB7LCHE1

Zambrano - cross

1 is that right?

2 THE WITNESS: Yes.

3 THE COURT: Did you have other private clients other  
4 than the three companies?

5 THE WITNESS: Yes.

6 THE COURT: What kinds of matters did you represent  
7 those clients in in the two or three years after you left the  
8 Air Force?

9 THE WITNESS: Different matters but mainly dependency,  
10 executory or executive trials.

11 THE INTERPRETER: I need to inquire, your Honor.

12 I need to look it up, your Honor.

13 THE WITNESS: Protest or noting of checks.

14 THE COURT: Can you explain what dependency meant?

15 THE WITNESS: Prenatal care, child support.

16 THE COURT: And what did executive trials involve?

17 THE WITNESS: The lawsuits for collection drafts,  
18 IOUs, so it can be understood.

19 THE COURT: Thank you very much.

20 Mr. Gomez.

21 BY MR. GOMEZ:

22 Q. Dr. Zambrano, why did you choose -- when did you become a  
23 prosecutor, sir?

24 A. In 1994.

25 Q. Why did you make the decision to become a prosecutor in



DB7LCHE1

Zambrano - cross

1 1994?

2 A. It was an opportunity to investigate in depth and to avoid  
3 cases remained unpunished and this is how I can contribute to  
4 society.

5 Q. As a prosecutor was your work focused or specialized in a  
6 particular area?

7 A. Could you please repeat the question?

8 Q. Yes. As a prosecutor, was your practice focused on a  
9 particular area?

10 A. Initially I was appointed traffic prosecutor. Later, first  
11 prosecutor, second prosecutor, deputy, and then lead  
12 prosecutor. Then I was deputy, equivalent would be district  
13 attorney, in the Napo Province, and alternate prosecutor in the  
14 Sucumbios Province.

15 Q. What types of cases did you handle as a lead prosecutor?

16 A. At what time?

17 Q. You testified that you first started as a first prosecutor,  
18 a second prosecutor, and ultimately in the position of lead  
19 prosecutor.

20 When you were in the position of lead prosecutor, what  
21 sorts of cases were you responsible for?

22 A. Exclusively criminal matters.

23 Q. Were they criminal matters that involved a higher degree of  
24 charge or a higher penalty?

25 A. Much higher.

DB7LCHE1

Zambrano - cross

1 Q. Can you give us some examples?

2 A. On many occasions I made statements against the guerrillas  
3 and even brought charges against the person who at that time  
4 was the president's cousin and other very delicate cases.

5 Q. When you said president's cousin, who were you referring  
6 to, sir?

7 A. Engineer Lucio Gutierrez was the president at that time.

8 Q. What sort of accusation did you make against that  
9 gentleman?

10 MR. MASTRO: Objection, relevance.

11 THE COURT: Overruled.

12 A. Embezzlement, misuse of public funds.

13 Q. How was that matter resolved?

14 A. As a prosecutor, I render my accusatory document, but I do  
15 not know as to how that was resolved.

16 Q. What sort of cases did you handle as deputy district  
17 attorney in Napo?

18 THE COURT: I think we're beginning to press the  
19 bounds of relevance pretty extensively, sir. It's very helpful  
20 to get a sense of who Mr. Zambrano is and what his experience  
21 is, but there is a limit.

22 MR. GOMEZ: I'll move on, your Honor.

23 Q. Dr. Zambrano, why did you -- when did you become a judge  
24 for the first time?

25 A. In 2008.

DB7LCHE1

Zambrano - cross

1 Q. Why did you decide to become a judge?

2 A. It was a kind of promotion. I was involved in a selection  
3 process and out of all the participants at the national level,  
4 I came in second.

5 Q. And as a result of you coming in second, what occurred  
6 next?

7 THE COURT: Sustained as to form. What happened next.

8 Q. Is this process that you described the method by which you  
9 obtained employment as a judge for the first time, sir?

10 A. Yes.

11 Q. Dr. Zambrano, I want to direct your attention to the moment  
12 before your second term presiding over the Lago Agrio case when  
13 Judge Ordóñez was in charge of the case.

14 Do you recall the specific grounds that Chevron  
15 asserted for Judge Ordóñez's recusal at that time?

16 A. That he had not ruled on many motions.

17 Q. Motions filed by who, sir?

18 A. By Chevron.

19 Q. Do you recall how many motions had not been acted upon at  
20 that time?

21 THE COURT: I take it -- Mr. Mastro, you were rising  
22 or not?

23 MR. MASTRO: I was going to object, your Honor.

24 THE COURT: Sustained.

25 I take it this is all a matter of record.

DB7LCHE1

Zambrano - cross

1 MR. GOMEZ: Your Honor, I'd like to use a document.  
2 May I approach?

3 THE COURT: Yes. This is not marked, counselor, as  
4 far as --

5 MR. GOMEZ: This is Defendant's Exhibit DX --

6 THE COURT: Forgive me, I misspoke.

7 MR. GOMEZ: -- 1561.

8 THE COURT: 1561.

9 MR. GOMEZ: Yes.

10 (Continued on next page)

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DB78CHE2

Zambrano - cross

1 MR. GOMEZ: For the record, the first three pages are  
2 an English translation, page 4 purports to be a certification  
3 of the translation, and pages 5, 6 and 7 are the same document  
4 in Spanish.

5 Q. Dr. Zambrano, I would like to direct your attention to  
6 pages 5, 6 and 7 of this document. Can you tell me if you  
7 recognize it, sir?

8 THE COURT: Is there any dispute about authenticity  
9 and about what it is?

10 MR. MASTRO: No, your Honor.

11 THE COURT: It's agreed between counsel that this is a  
12 copy of a paper filed in the court in Lago Agrio, is that  
13 right?

14 MR. GOMEZ: Yes, your Honor.

15 THE COURT: Mr. Friedman?

16 MR. BOOTH: Yes, your Honor.

17 THE COURT: Mr. Mastro?

18 MR. MASTRO: Yes, your Honor.

19 THE COURT: Next question.

20 Q. Dr. Zambrano, is this an order that you issued in the Lago  
21 Agrio case?

22 A. This is a notification made by the clerk of an order, which  
23 was issued in a separate notebook, which is a motion for  
24 recusal of Judge Ordonez.

25 Q. Is that motion for recusal of Judge Ordonez in the Lago

DB78CHE2

Zambrano - cross

1 Agrio case, sir?

2 A. Yes. This was the basis for removing Judge Ordonez.

3 MR. GOMEZ: I would move this into evidence DX 1561.

4 THE COURT: Is there any objection?

5 MR. MASTRO: As long as it's not for the truth of the  
6 matters asserted, we have no objection.

7 THE COURT: Received but not for the truth.

8 (Defendant's Exhibit 1561 received in evidence)

9 Q. Dr. Zambrano, I would like to direct your attention to the  
10 second page of the Spanish, under a heading marked number 5, or  
11 *quinto*. I would like you to read that section to yourself,  
12 sir.

13 THE COURT: Is there a question?

14 Q. Sir, is it true that at this time Judge Ordonez had failed  
15 to act on 47 briefs that Chevron filed between April and August  
16 of 2010?

17 MR. MASTRO: Objection, your Honor.

18 THE COURT: What is the objection?

19 MR. MASTRO: Your Honor, relevance, and this is not  
20 what we are supposed to do. The document speaks for itself.  
21 It is in evidence. He asked the witness what it says. I don't  
22 think that's a proper question.

23 THE COURT: Mr. Gomez.

24 MR. GOMEZ: The document is not in for the truth.

25 THE COURT: I know. There is a reason for that.

DB78CHE2

Zambrano - cross

1 MR. GOMEZ: I am asking the witness whether the  
2 material stated in the document is true, whether he was the  
3 person who issued this order, and so he should have knowledge  
4 of that fact.

5 MR. MASTRO: Your Honor has already ruled that the  
6 defense allegation about the number of motions filed in the  
7 case is not relevant to a defense.

8 THE COURT: What is the relevance of it, Mr. Gomez?

9 MR. GOMEZ: I can address that at a side bar.

10 (Continued on next page)

DB78CHE2

Zambrano - cross

1 (At the side bar)

2 MR. GOMEZ: Your Honor, we have heard testimony in  
3 this case that in a year prior to this recusal Mr. Guerra, at  
4 the insistence of Mr. Zambrano, had made approaches to Chevron  
5 to fix the case. Here is a time in September of 2010 when  
6 Judge Ordonez is presiding over the matter. The subsequent  
7 judge who will necessarily have to take over is Judge Zambrano.  
8 And Chevron is filing a motion to recuse Judge Ordonez, knowing  
9 what I think this witness will establish that Judge Zambrano  
10 would then assume the position and preside over the case.

11 THE COURT: How is he going to testify that's what  
12 Chevron knew?

13 MR. GOMEZ: He will testify, I believe, because of the  
14 position that he held in the court at the time that Judge  
15 Zambrano was recused, that he would be the next in line -- once  
16 Judge Ordonez was recused.

17 THE COURT: How does the answer to the question, Were  
18 the facts stated in this order true, get you in that direction?

19 MR. FRIEDMAN: Can I say something?

20 THE COURT: Yes.

21 MR. FRIEDMAN: This also goes to another point, which  
22 is that the -- I just lost my point. There was all this  
23 backlog of motions, if you will, and if I recall it correctly,  
24 Chevron is the one that --

25 THE COURT: I can't hear you, sir.



DB78CHE2

Zambrano - cross

1 MR. FRIEDMAN: Chevron is the one who asked that Judge  
2 Ordonez be recused with this backlog of all these motions. The  
3 fact that it's true that there was this backlog of all these  
4 motions, and then he very promptly ruled on these motions, they  
5 are arguing is some sort of impropriety on his part. This goes  
6 back to earlier testimony in the trial.

7 THE COURT: The question that was put to the witness  
8 doesn't have anything to do with whether he promptly ruled on  
9 these motions.

10 MR. FRIEDMAN: I don't know where Mr. Gomez is going,  
11 but it's relevant to that point.

12 THE COURT: The objection is sustained. I haven't  
13 heard any good reason.

14 MR. MASTRO: We have the English translation. It's in  
15 evidence as Plaintiff's Exhibit 1141 of the case that Mr. Booth  
16 was questioning the witness about this morning.

17 THE COURT: Thank you.

18 MR. MASTRO: His DX 1544.

19 (Continued on next page)  
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DB78CHE2

Zambrano - cross

(In open court)

THE COURT: Next question.

BY MR. GOMEZ:

Q. Dr. Zambrano, when Chevron moved to recuse Judge Ordonez, who would have been the next judge that would have taken over presiding over this case?

MR. MASTRO: Objection to form.

THE COURT: Sustained.

Q. When Chevron moved to recuse Judge Ordonez, which judge would have taken over the Lago Agrio case?

MR. MASTRO: Same objection.

THE COURT: Exactly the same question. Exactly the same objection. Exactly the same ruling.

Next. There are ways to prove what you're trying to prove, if it's correct, but this isn't it.

Q. Dr. Zambrano, according to the procedures in place at the time that Chevron moved for Judge Ordonez's recusal, what judge, if any, would have been assigned to the case upon his recusal?

MR. MASTRO: Objection.

THE COURT: What is the objection?

MR. MASTRO: He is asking in the subjunctive.

THE COURT: Well, it's a conditional question.

Overruled.

MR. MASTRO: It's fine, your Honor.

DB78CHE2

Zambrano - cross

1 A. Me.

2 Q. Why?

3 A. Because I was the alternate president of the court. This  
4 means that if the sitting president is not hearing the case, I  
5 would then have to hear the case.

6 Q. Were the procedures that would have required you to hear  
7 the case in Judge Ordonez's stead known to the public?

8 THE COURT: Sustained.

9 Q. Once you began to preside over the Lago Agrio case, did you  
10 have an opportunity to rule on the outstanding motions that  
11 Judge Ordonez had failed to act upon?

12 A. Yes.

13 Q. How did you do that?

14 A. That is included in the content of the corresponding order,  
15 and in order to do that I had to review the records so that I  
16 could then look into the relevance or not of the motion or  
17 request.

18 Q. Were each of those motions unique?

19 THE INTERPRETER: I'm sorry.

20 Q. Were each of those motions unique?

21 A. They were motions or requests that were disguised as other  
22 motions or requests. They were repetitive in different words.

23 Q. How long did it take you, upon review of these motions, to  
24 act upon them?

25 MR. MASTRO: Objection. Relevance.

DB78CHE2

Zambrano - cross

1 THE COURT: Sustained.

2 Q. Dr. Zambrano, what is autos para sentencia?

3 A. It is the judge's decision in which he declares that the  
4 evidentiary period has concluded, and he requests that the  
5 record be sent to him in order to rule.

6 Q. Do you recall if prior to his recusal, Judge Ordóñez issued  
7 autos para sentencia in the Lago Agrio case?

8 MR. MASTRO: The record speaks for itself, your Honor.

9 THE COURT: Folks, that would be right, wouldn't it,  
10 Mr. Gomez?

11 MR. GOMEZ: If the plaintiff will stipulate that that  
12 was so, I can move on.

13 THE COURT: I don't know if they will. But the record  
14 will show it one way or the other, right?

15 MR. MASTRO: We will stipulate to when that date was.

16 THE COURT: Let's move on.

17 Do you know what the date was?

18 MR. GOMEZ: I have a document that I was going to show  
19 the witness.

20 THE COURT: Why don't you show it to Mr. Mastro  
21 instead of taking all of this time.

22 MR. GOMEZ: For the record, I have handed Mr. Mastro  
23 Defendants' Exhibit 1560.

24 MR. MASTRO: We have no objection to it being received  
25 on the same basis as the others, not for the truth of the

DB78CHE2

Zambrano - cross

1 matters asserted.

2 THE COURT: Is that satisfactory?

3 MR. GOMEZ: Yes, your Honor.

4 THE COURT: Mr. Friedman.

5 MR. FRIEDMAN: Yes, your Honor.

6 THE COURT: Defendants' 1560 is received not for the  
7 truth of the matter. Let's go.

8 (Defendant's Exhibit 1560 received in evidence)

9 Q. Dr. Zambrano, when you took over presiding the Lago Agrio  
10 case on your second term, did you know whether Judge Ordenez  
11 had issued an autos para sentencia by that time?

12 A. I don't recall.

13 Q. Sir, did anyone associated with Chevron ever express to you  
14 at the time that Judge Ordenez was asked to be recused that  
15 they would like you to replace Judge Ordenez?

16 MR. MASTRO: Objection, your Honor.

17 THE COURT: Ground.

18 MR. MASTRO: Form. Vagueness. Hearsay.

19 THE COURT: Overruled.

20 A. No.

21 Q. Did Chevron take any action to block you from presiding  
22 over the Lago Agrio case after Judge Ordenez's recusal in  
23 September 2010?

24 A. No.

25 Q. Before you began to preside over the Lago Agrio case in

DB78CHE2

Zambrano - cross

1 October 2012, do you know whether Chevron ever complained to  
2 anyone about you as a judge?

3 MR. MASTRO: Objection. Hearsay. Speculation.  
4 Vagueness.

5 THE COURT: Sustained on foundation grounds.

6 Q. Prior to you presiding over the Lago Agrio case October  
7 2010, were you aware of any complaints by Chevron against you  
8 for your conduct as a judge?

9 A. No.

10 Q. Did Chevron ever take any action to have you recused after  
11 you began to preside over the Lago Agrio case in October 2011?

12 MR. MASTRO: Objection.

13 A. No.

14 Q. I want to turn your attention, sir, to the time period  
15 after you issued the judgment, after you --

16 THE COURT: We will take our morning break now.

17 (Recess)

18 THE COURT: Mr. Gomez, how much longer do you expect  
19 to be with the witness?

20 MR. GOMEZ: Probably another hour or so.

21 THE COURT: Then you, Mr. Mastro, how much longer with  
22 the witness?

23 MR. MASTRO: Your Honor, we are going to finish him  
24 before lunch. I am going to be brief.

25 THE COURT: If he goes more than an hour. From your

DB78CHE2

Zambrano - cross

1 lips to God's ears, both of you. That's all I can say.

2 Let's go, Mr. Gomez.

3 BY MR. GOMEZ:

4 Q. Judge Zambrano, I want to get a little bit more on the  
5 subject of the OCP case.

6 Yesterday you had testified that as an appeals judge  
7 with two other judges you dismissed that case. Do you remember  
8 that testimony, sir?

9 A. Yes.

10 Q. Can you give us an explanation of the grounds by which you  
11 decided to dismiss that case?

12 A. Yes.

13 Q. Please do so.

14 A. Yes. The plaintiffs reformed or modified the claim in the  
15 hearing.

16 Q. What is the significance of that?

17 A. The law does not allow for a claim to be modified, and it  
18 was dismissed for that reason.

19 Q. Now, sir, going to the time period after you were no longer  
20 presiding over the Lago Agrio litigation, after you had issued  
21 the judgment, did Chevron make any attempt to contact you?

22 A. Yes.

23 Q. Explain how that came about.

24 A. It was through Dr. Guerra.

25 Q. What did Dr. Guerra do in that respect?

DB78CHE2

Zambrano - cross

1 A. He said that Chevron was willing to give me a minimum of \$1  
2 million or whatever I wanted.

3 Q. Did Mr. Guerra say this to you in person or over the  
4 telephone?

5 A. In person.

6 Q. Approximately when did he make this statement to you, sir?

7 A. Well, most could have been the month of August 2012. He  
8 handed me some documents, which made it apparent that a certain  
9 Dr. Rivero, Andres Rivero, was an attorney for Chevron, and  
10 wanted to speak to me.

11 Q. Where did you meet Mr. Guerra when he gave you these  
12 documents?

13 A. He met me at the airport.

14 Q. When he gave these documents to you, did he say anything  
15 else?

16 MR. MASTRO: Objection. Hearsay, your Honor.

17 THE COURT: It calls for a yes or no.

18 A. Would you please repeat the question?

19 MR. GOMEZ: Would the court reporter kindly read the  
20 question back?

21 THE COURT: Yes.

22 (Record read)

23 A. Yes.

24 Q. What did he say?

25 MR. MASTRO: Objection. Hearsay.



DB78CHE2

Zambrano - cross

1 THE COURT: Mr. Gomez.

2 MR. GOMEZ: Your Honor, we have heard testimony from  
3 Mr. Guerra that he was acting as an agent of Chevron at the  
4 time, and under evidence rule 801(d)(2) we ask --

5 THE COURT: Please draw my attention to the transcript  
6 where that was said, that he was acting as an agent for  
7 Chevron.

8 Don't say anything, please, Mr. Zambrano. Wait.

9 (Pause)

10 THE COURT: Would one of you remind me what day  
11 Mr. Guerra started to testify.

12 MR. FRIEDMAN: Your Honor, if we could do a side bar.

13 THE COURT: I would just like the answer first.

14 Last week, right?

15 MS. LITTLEPAGE: He started on October the 23rd.

16 MR. GOMEZ: Your Honor, I am going to withdraw that  
17 question.

18 THE COURT: All right.

19 BY MR. GOMEZ:

20 Q. I am going to show the witness a document. This is  
21 Defendants' Exhibit 92.

22 Dr. Zambrano, I am showing you what has been marked as  
23 Defendants' Exhibit 92. The Spanish translation begins at page  
24 131 of this 250 page exhibit.

25 Please turn to page 131, sir.

DB78CHE2

Zambrano - cross

1 THE COURT: This appears to correspond to page 2 of  
2 the English.

3 MR. GOMEZ: Thank you.

4 Q. From pages 131, sir, through 135, what do you recognize  
5 that to be?

6 MR. GOMEZ: For the record, the corresponding pages  
7 are 2 through 6 in the English.

8 A. This is the sworn statement that I gave.

9 Q. Mr. Zambrano, if you will now turn to the page marked 138,  
10 do you recognize that?

11 A. The portion that is in the upper center portion of the  
12 page, I do recognize that.

13 Q. What do you recognize that to be, sir?

14 A. It is a business card that was inside the documents that  
15 Dr. Guerra gave to me and that were from Mr. Andres Rivero.

16 Q. Are these the same documents --

17 THE COURT: Just a minute.

18 You say they were from Andres Rivero. How do you know  
19 that?

20 THE WITNESS: Because Dr. Guerra told me that all  
21 those documents were proof of the fact that Dr. Andres Rivero  
22 was an attorney for Chevron, and in that folder there was also  
23 this little card.

24 Q. Dr. Zambrano, do you recognize the rest of the documents  
25 behind that copy of a business card, pages 139 through 250?

DB78CHE2

Zambrano - cross

1 THE COURT: We are now to have a recess so that he can  
2 read 140 pages of material, is that the idea?

3 MR. GOMEZ: No.

4 THE COURT: What are we doing?

5 Q. Mr. Zambrano, are these documents familiar to you?

6 A. Yes.

7 Q. What do you identify them to be?

8 THE COURT: Before we do that, pages 141 to 250 are  
9 all in English. Am I correct, Mr. Zambrano, you can't read any  
10 of it, right?

11 THE WITNESS: Yes.

12 THE COURT: Go ahead, Mr. Gomez. Put your question.

13 Q. How do you recognize these documents, Dr. Zambrano?

14 A. Because they were highlighted in yellow.

15 THE INTERPRETER: I need to inquire, your Honor.

16 A. It was highlighted in yellow and different documents that  
17 stated that he had acted on Chevron's behalf, representing  
18 Chevron.

19 Q. You had testified earlier that Mr. Guerra provided you with  
20 documents. Are these the documents, copies of the documents  
21 that Mr. Guerra provided to you at the airport on or about  
22 mid-August 2012?

23 A. Yes. These are copies because these ones are not  
24 highlighted in yellow as the papers were which he had  
25 highlighted, in which you would mainly see the name Andres

DB78CHE2

Zambrano - cross

1 Rivero, and he was matching it up with the business card which  
2 was Andres Rivero, attorney for Chevron.

3 MR. GOMEZ: I ask that we move these documents into  
4 evidence DX 92.

5 THE COURT: I'm sorry.

6 MR. GOMEZ: DX 92.

7 MR. MASTRO: Your Honor, we have no objection so long,  
8 obviously, as it's not being offered for the truth.

9 THE COURT: It will be received not for the truth, but  
10 just to clarify something.

11 Mr. Zambrano, you say that the documents Mr. Guerra  
12 gave you on the occasion at the airport were highlighted in  
13 yellow, right?

14 THE WITNESS: Yes. He had highlighted them.

15 THE COURT: Did you see him highlight them?

16 THE WITNESS: He gave them to me highlighted.

17 THE COURT: So somebody highlighted them.

18 Now, where are those highlighted documents today?

19 THE WITNESS: I had them.

20 THE COURT: Yes. But where are they today?

21 THE WITNESS: In Ecuador.

22 THE COURT: And they were among the documents you were  
23 asked to bring here to the United States to testify, isn't that  
24 true?

25 THE WITNESS: I have never been asked to bring

DB78CHE2

Zambrano - cross

1 documents here.

2 THE COURT: All right.

3 Now, the first several pages of the Spanish part of  
4 this document is your, I think you called it sworn statement.  
5 And then behind the page that has your signature, which is page  
6 135, there is the big pile of documents, none of which is  
7 highlighted, right?

8 THE WITNESS: The sworn statement was not highlighted.  
9 This was mine.

10 THE COURT: Yes. Pages 136 to 250 are not  
11 highlighted, right, not in a single place?

12 THE WITNESS: There are some like black things there,  
13 and it is there which was highlighted. Because this is a copy  
14 in black and white, it couldn't show in yellow.

15 THE COURT: Well, did you copy the highlighted pages  
16 in Ecuador?

17 THE WITNESS: Yes.

18 THE COURT: What did you do with the copies?

19 THE WITNESS: I turned them over along with this sworn  
20 statement.

21 THE COURT: To whom did you turn them over?

22 THE WITNESS: To attorney Pablo Fajardo.

23 THE COURT: So when you say here today that pages 136  
24 to 250 -- I guess, 138 to 250 are documents that you were given  
25 by Mr. Guerra at the airport, you're simply assuming that those

DB78CHE2

Zambrano - cross

documents are what you gave to Pablo Fajardo, is that true?

THE WITNESS: Yes.

THE COURT: You can't read them, right?

THE WITNESS: It was not necessary because Dr. Guerra only wanted to show me that Dr. Andres Rivero had appearances on behalf of Chevron, and that's why the words Chevron were also highlighted.

THE COURT: I think the point is reasonably clear, at least it is to me.

It is in evidence for what it is worth.

(Defendants' Exhibit 92 received in evidence)

Q. Mr. Zambrano, when Mr. Guerra gave these documents to you, was it during that same meeting that he mentioned Chevron's proposal to pay you a million dollars?

MR. MASTRO: Objection, your Honor.

THE COURT: Sustained.

Q. When did Mr. Guerra communicate to you Chevron's proposal to pay you a million dollars?

MR. MASTRO: Objection, your Honor. Hearsay.

MR. GOMEZ: I am asking for a time.

THE COURT: Sustained.

Look, precision is extraordinarily important here, and you are saying Chevron's proposal. Maybe it was Chevron's proposal. Maybe it was Guerra's proposal independent of Chevron. Let's stick to the facts. Let's not build into the

DB78CHE2

Zambrano - cross

1 question assumptions in the hope that sooner or later the  
2 witness will buy in.

3 Q. Mr. Zambrano, when did Mr. Guerra communicate to you the  
4 one million dollar proposal that you have described in your  
5 testimony?

6 A. He said it to me at the airport.

7 Q. Did he say it to you at the airport at the same time in the  
8 same meeting when he gave you these documents?

9 A. Yes.

10 Q. What else, if anything, did he say to you with regard to  
11 the proposal that you have described?

12 MR. MASTRO: Objection. Hearsay.

13 THE COURT: What is the proof of agency?

14 MR. FRIEDMAN: Can we approach the bench on that, your  
15 Honor?

16 THE COURT: Sure.

17 (Continued on next page)

DB78CHE2

Zambrano - cross

1 (At the side bar)

2 MR. FRIEDMAN: We have recorded statements in evidence  
3 from Mr. Guerra being interviewed by Chevron in June or July of  
4 2012, in which they discuss wanting him to be a bridge to  
5 Zambrano.

6 MS. LITTLEPAGE: Mr. Rivero in his sworn deposition on  
7 page 144 and 145 confirms that he, on behalf of Chevron, asked  
8 Mr. Guerra to approach Mr. Zambrano to give Mr. Zambrano a  
9 series of documents, including his business card, and to have a  
10 discussion with Mr. Zambrano about finalizing the terms of a  
11 cooperation agreement.

12 MR. MASTRO: Your Honor, all that that testimony was  
13 was that Mr. Rivero wanted to speak to Mr. Zambrano. So he was  
14 providing documents that confirmed he had been an attorney who  
15 represented Chevron.

16 For agency purposes, it has to be someone acting  
17 within the scope of the relationship. Guerra wasn't at that  
18 point doing anything other than talking to Chevron and  
19 considering gathering evidence.

20 THE COURT: Is the deposition in evidence?

21 MR. MASTRO: The Rivero deposition is not in our case.  
22 They intend to offer portions of it.

23 THE COURT: Can I see it?

24 MS. LITTLEPAGE: Yes. I think it starts towards the  
25 bottom of the page.



DB78CHE2

Zambrano - cross

1 THE COURT: Does anybody have a hard copy of this?

2 MR. MASTRO: We will get it for you.

3 If I could just say, Mr. Rivero also answered  
4 questions about, and said absolutely not, was Mr. Guerra asked  
5 to go to Mr. Zambrano with any offers of money. He said all  
6 that was discussed with Guerra was I would like to meet with  
7 Zambrano to ask him questions.

8 THE COURT: Let me see the deposition.

9 MR. MASTRO: Certainly, your Honor.

10 We are trying to find it in the back room, the hard  
11 copy.

12 THE COURT: In the meantime, let's go to Mr.  
13 Friedman's point. Show me the tape-recorded meeting where you  
14 say which constitutes the authorization in your view.

15 MR. MASTRO: I just wanted to add, Guerra's witness  
16 declaration of his direct in this case expressly says Chevron  
17 did not authorize him to make any sort of financial proposal to  
18 Mr. Zambrano.

19 MS. LITTLEPAGE: I have the page number, but I don't  
20 have the actual document. It's page number 45.

21 THE COURT: Of what?

22 MS. LITTLEPAGE: Of the July 13, 2012 tape-recorded  
23 conversation.

24 THE COURT: What exhibit is that?

25 MS. LITTLEPAGE: I do have that. That would be

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Zambrano - cross

1 Exhibit DX 1361.

2 THE COURT: Is that in?

3 MS. LITTLEPAGE: Yes. It came in with Mr. Guerra.

4 THE COURT: 1361.

5 MS. LITTLEPAGE: 1361.

6 THE COURT: You're going to have to find me the  
7 exhibit because the electronic version that you gave me of the  
8 defense exhibits doesn't go that high.

9 Mr. Mastro, Ms. Littlepage, come up here, please.

10 MS. LITTLEPAGE: I also found where Mr. Guerra said it  
11 in his trial transcript.

12 "Did Chevron tell you you were the bridge to  
13 Zambrano?"

14 THE COURT: That's fine.

15 Let's go back to 1361, which you tell me is the  
16 transcript of the July 13 meeting.

17 MR. FRIEDMAN: The recorded statement, yes.

18 THE COURT: Transcription.

19 MS. LITTLEPAGE: 66. You are the bridge, the bridge  
20 to Zambrano.

21 THE COURT: Bridges are very nice, but is there  
22 anything anywhere that says that Rivero authorized him to make  
23 a proposal, a monetary proposal, to Zambrano about anything?

24 MR. FRIEDMAN: No. I think what we have is  
25 authorization that he go to Zambrano and try to get him to

DB78CHE2

Zambrano - cross

1 cooperate with Chevron.

2 MR. MASTRO: This is Guerra's sworn statement on the  
3 subject, which they could have cross-examined him on.

4 THE COURT: What am I looking at here on this  
5 computer? This is his witness statement?

6 MR. MASTRO: Yes.

7 MS. NEUMAN: Paragraph 58.

8 MS. LITTLEPAGE: In his deposition on page 169, he  
9 says, "I was the bridge to Zambrano."

10 THE COURT: And at paragraph 58 of his direct he said,  
11 "That is why I took it upon myself to suggest to Mr. Zambrano  
12 that he attempt to negotiate a substantial million dollar  
13 payment from Chevron on his own behalf, even though Chevron  
14 never suggested any such thing."

15 MS. LITTLEPAGE: But on page 66 of the July 13  
16 transcript he says that, "You get yours when a deal is reached  
17 with Zambrano." That's what Chevron told him. Chevron said,  
18 "You get yours when a deal is reached with Zambrano."

19 MR. FRIEDMAN: I think our point, your Honor, is the  
20 scope of the agency is they clearly asked him to make a deal  
21 with Zambrano. It's within the scope of the agency under  
22 801(d)(2). I don't want to characterize it. They sent him to  
23 make a deal with Zambrano.

24 MS. LITTLEPAGE: He said in his trial testimony, "Did  
25 Chevron tell you you will get yours when a deal is reached with

DB78CHE2

Zambrano - cross

1 Zambrano?" "They did say that."

2 MR. MASTRO: Both Guerra and Rivero testified Guerra  
3 was never authorized to make a financial proposal to Zambrano.  
4 Guerra was asked to try and set up a meeting so Chevron can  
5 talk to Zambrano which never happened.

6 THE COURT: Is there anything else that anyone wants  
7 me to look at here?

8 MR. MASTRO: No, your Honor. I did want to say one  
9 other thing. I was going to wait until this line was done.

10 The question that elicited the hearsay from this  
11 witness about Guerra saying a million dollars was in a question  
12 about what did Guerra do, not what did Guerra say. So I think  
13 that part of the answer should be stricken as well. The  
14 question elicited hearsay that shouldn't have been said because  
15 it was a question.

16 We have the Rivero deposition here if your Honor wants  
17 it. We will try and find the specific pages.

18 MS. LITTLEPAGE: It was not objected to.

19 MR. MASTRO: The question was what Guerra did, if you  
20 want to read the question.

21 MS. LITTLEPAGE: I don't have the transcript.

22 THE COURT: Stop arguing.

23 MR. MASTRO: Sorry, your Honor.

24 THE COURT: I think what I will do is I will listen to  
25 the testimony and I will defer ruling on whether it comes in

DB78CHE2

Zambrano - cross

1 for the truth. If at the end of the day I don't believe it  
2 anyway, which might occur, it doesn't matter. If I believe it,  
3 I will decide whether it's admissible against the plaintiff.

4 MR. MASTRO: Understood, your Honor. Thank you.

5 (Continued on next page)  
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DB78CHE2

Zambrano - cross

1 (In open court)

2 THE COURT: I have decided to hear the testimony  
3 without the determining whether it's admissible against Chevron  
4 for the truth of the matter asserted. I will reserve on that  
5 question. Depending on my judgment at the end of the trial as  
6 to the credibility of the witnesses, it may be immaterial.

7 Let's proceed.

8 MR. GOMEZ: Your Honor, to get my bearings, may I have  
9 the last two questions and answers.

10 THE COURT: Yes.

11 (Record read)

12 THE COURT: Go ahead.

13 Q. Can you answer that question, sir?

14 A. He even told me it was necessary, I could travel to the  
15 United States in order to speak over there with Chevron's  
16 representatives.

17 Q. How did you respond?

18 A. I was about to take my flight, and I left. I didn't say  
19 anything to him absolutely.

20 Q. Did you have any subsequent conversation with Mr. Guerra  
21 about this subject?

22 A. He insisted over the phone, and I would be evasive so that  
23 he would not insist.

24 Q. When did he call you?

25 A. I don't recall the dates.

DB78CHE2

Zambrano - cross

1 Q. Approximately how much time passed between your meeting at  
2 the airport and Mr. Guerra's first telephone call on this  
3 subject?

4 A. About, perhaps, a week.

5 Q. Did he only call you once or more than once?

6 A. The last two times when he called me I definitely had to  
7 talk to him firmly, and he didn't call me again anymore.

8 Q. How many total times did he call you on this subject?

9 A. About two times.

10 Q. Have you ever spoken to Andres Rivero?

11 A. Never -- oh, excuse me, yes. One time, but on the phone,  
12 he said he was Andres Rivero.

13 Q. Approximately when did you have that conversation?

14 A. At the beginning of the year, in January.

15 Q. January 2012?

16 A. Of this year.

17 Q. January 2013?

18 A. Yes.

19 Q. What did you discuss with the person who identified himself  
20 as Mr. Rivero on this call?

21 A. He told me he was Andres Rivero, that he was an attorney  
22 for Chevron, that he was in Manta, that he wanted to talk to me  
23 in person, that he knew that I was not alone at home, that we  
24 could talk in a hotel or some other place, and that it was  
25 important that they already had Dr. Guerra in the United

DB78CHE2

Zambrano - cross

1 States.

2 Q. Approximately how long did this telephone conversation  
3 last?

4 A. It wasn't very long.

5 Q. Did you record this conversation?

6 A. Yes.

7 Q. How did you record the conversation?

8 A. I put something on my phone to record it because this phone  
9 call included very indecorous proposals.

10 Q. Did you ever provide a copy of that recording to counsel  
11 for the defendants in this case?

12 A. Yes.

13 Q. Is that recording attached to your written declaration  
14 which we have identified during your testimony?

15 A. Yes.

16 MR. GOMEZ: Your Honor, we have the recordings marked  
17 as Defendants' Exhibit 85.

18 THE COURT: First of all, is a transcription attached  
19 in Defendants' Exhibit 92?

20 MR. GOMEZ: Defendants' Exhibit 84 is the  
21 transcription. We have marked that. We have the recording on  
22 an audio CD which we have marked. And what I would like to do  
23 is to play the recording and have him authenticate the  
24 recording.

25 THE COURT: It's in Spanish, right?



DB78CHE2

Zambrano - cross

1 MR. GOMEZ: Yes, it is.

2 THE COURT: You say he hasn't listened to it before?

3 MR. GOMEZ: I am not telling you that. I would like  
4 him to authenticate it here in court and then offer it into  
5 evidence.

6 THE COURT: You can play it for him over the lunch  
7 break.

8 MR. GOMEZ: Thank you.

9 (Continued on next page)

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DB7LCHE3

Zambrano - cross

1 MR. GOMEZ: Thank you.

2 Q. Mr. Zambrano, did you ever --

3 THE COURT: The way this is normally done is that it's  
4 played for the witness in advance. The witness initials the CD  
5 or the recording so that it establishes it's the same thing.  
6 That's the way it's normally done.

7 MR. GOMEZ: Understood. Thank you.

8 Q. Mr. Zambrano, turning to a different topic.

9 THE COURT: Excuse me. Before we leave there, I just  
10 want to -- well, no, I'll leave it. Thank you.

11 THE INTERPRETER: Your Honor, the interpreter would  
12 like to propose a better rendering: unseemly proposals in the  
13 previous answer.

14 THE COURT: Okay. Thank you.

15 MR. GOMEZ: Your Honor, may I move into evidence  
16 Plaintiff's Exhibit 84, which is the transcription.

17 THE COURT: Well, certainly not until you have the  
18 recording in. I mean you can move it but it's overruled.  
19 You're not going to get it in until you get the recording in.

20 Q. Mr. Zambrano, moving to a different topic.

21 THE COURT: The way you do this, Mr. Gomez, is you  
22 authenticate the recording and then you authenticate the  
23 transcription and then you, after the recording is in, you can  
24 get the transcription in.

25 MR. GOMEZ: Understood, your Honor. Thank you.

DB7LCHE3

Zambrano - cross

1 Q. Turning to a different topic, Mr. Zambrano, did you ever  
2 make any reports to the police in Ecuador related to the Lago  
3 Agrio case?

4 THE COURT: The record should reflect there's a very  
5 long pause going on.

6 A. Can you please clarify to what you are referring to?

7 Q. Did you ever contact the police in Ecuador regarding  
8 surveillance of you and your companion?

9 MR. MASTRO: Objection, leading.

10 THE COURT: Sustained.

11 Q. Have you ever made any reports to the police, Mr. Zambrano,  
12 on your behalf or your companion's behalf?

13 MR. MASTRO: Objection, relevance.

14 THE COURT: Sustained.

15 Q. Mr. Zambrano, after you issued the judgment in the Lago  
16 Agrio case, did you ever come to notice anyone following you?

17 MR. MASTRO: Objection, relevance, leading.

18 THE COURT: Pardon me?

19 MR. MASTRO: Objection, relevance, leading.

20 THE COURT: Sustained.

21 MR. GOMEZ: Your Honor, may we have a side bar,  
22 please?

23 THE COURT: No.

24 MR. GOMEZ: May --

25 THE COURT: Maybe when we break.

DB7LCHE3

Zambrano - cross

1 MR. GOMEZ: May I address the objection on relevance?

2 THE COURT: No. We've been up and down this mountain  
3 so many times, Mr. Gomez, I'll hear what you have to say later.

4 MR. GOMEZ: I'll move on for the time being.

5 THE COURT: Not a good use of time.

6 MR. GOMEZ: Thank you.

7 Q. Mr. Zambrano, turning to a different topic, in response to  
8 Mr. Mastro's questions, you testified that you secured your  
9 current employment in April of 2013 and executed an employment  
10 contract in May of 2013.

11 Do you remember that testimony, sir?

12 A. Yes.

13 Q. How did you apply for that position?

14 A. In the internet, well, I'm qualified as a contractor. And  
15 in the portal of public acquisitions, there was an invitation  
16 so that I could submit a bid regarding legal, as a legal  
17 advisor. I made my bid and after a procedure that is carried  
18 out, I was granted the contract.

19 Q. What do you mean by qualified contractor?

20 A. In the internet, well, not in the internet, but in the  
21 website of for public state acquisitions, you register and you  
22 offer your services as a contractor and all companies have  
23 access to that information. And when they require a certain  
24 service, they choose and they issue an invitation to the person  
25 who has been selected so that one can then submit his bids.

DB7LCHE3

Zambrano - cross

1 Q. And what is the procedure that is used to select the  
2 winning bid, if you know?

3 THE COURT: I think it might be useful to lay a  
4 foundation of how he might know that.

5 Q. You referred in your testimony to after a procedure. What  
6 did you mean by that?

7 THE COURT: Look, Mr. Gomez, I understand the effort.  
8 If somebody applies for a civil service job in the state of New  
9 York, the person can certainly say, for example, I took a test  
10 and there was a procedure and I got the job, right? That does  
11 not mean the person has any clue, let alone a clue based on  
12 personal knowledge, of what the procedure was in the hiring  
13 agency as to how they selected a candidate. That's the problem  
14 with your question.

15 MR. GOMEZ: I'll ask a different question, your Honor.

16 THE COURT: Thank you.

17 Q. Mr. Zambrano, how were you notified that you were hired?

18 A. Through the internet.

19 Q. And did you have to interview for the position before you  
20 were hired?

21 A. I received in my email the granting of the contract. And  
22 after that, there is an interview to finalize the details.

23 Q. Did you participate in such an interview?

24 A. Yes.

25 Q. How many people did you meet?

DB7LCHE3

Zambrano - cross

1 A. The administrative manager, the manager from human  
2 resources, and another person whom I don't recall.

3 Q. Now, you signed -- you executed an employment contract for  
4 this position, correct?

5 A. Yes.

6 Q. Does that contract mention or make reference to the Lago  
7 Agrio case?

8 A. No.

9 Q. Does that contract require you to give testimony on behalf  
10 of the Republic of Ecuador in any case?

11 A. No.

12 Q. Was there any discussion during your interviews for the  
13 position that you would be required to cooperate with the  
14 Republic of Ecuador in litigation regarding the Lago Agrio  
15 case?

16 A. No.

17 Q. Now, sir, you were supposed to appear for a deposition in  
18 Lima, Peru in May of this year; is that correct?

19 MR. GOMEZ: Let me withdraw that, your Honor.

20 Q. Mr. Zambrano, you were asked to appear for a deposition in  
21 Lima, Peru in May of 2013 in this case, correct?

22 A. Yes.

23 Q. Did you inform your employer that you had received that  
24 request?

25 A. I just obtained the job and for that reason I could not

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Zambrano - cross

1 attend.

2 Q. What did you just obtaining employment have to do with you  
3 being able to attend the deposition exactly?

4 THE COURT: Could we go back to the question you asked  
5 to which we've not had an answer yet, unless you're withdrawing  
6 it.

7 MR. GOMEZ: Will the court reporter please read back  
8 the last question.

9 THE COURT: The question was: Did you inform your  
10 employer that you had received that request? I assume you  
11 asked it because you'd like an answer.

12 MR. GOMEZ: Yes, your Honor. Thank you.

13 THE COURT: I'm curious too.

14 THE WITNESS: No. This was a personal matter.

15 Q. Do you have any knowledge whether your employer was aware  
16 that your presence was requested in Lima for a deposition in  
17 this case?

18 MR. MASTRO: Objection.

19 THE COURT: The objection is sustained. Calls for a  
20 state of mind of someone else.

21 Q. Did your employer or supervisors ever tell you that they  
22 knew your appearance had been requested for a deposition in  
23 Lima in this case?

24 A. No.

25 Q. You never attended that deposition, correct, Mr. Zambrano?

DB7LCHE3

Zambrano - cross

1 A. Yes.

2 Q. Did anyone at your employment ever ask you why you did not  
3 attend your deposition in Lima?

4 A. No.

5 Q. Has anyone at your place of employment since May 2013 until  
6 the present ever made any inquiry of you regarding your failure  
7 to appear for a deposition in Lima?

8 MR. MASTRO: Objection. Asked and answered.

9 THE COURT: Overruled.

10 A. No.

11 Q. Turning to a different subject, you have identified in your  
12 testimony, Mr. Zambrano, your written declaration.

13 Has anyone paid you any money in exchange for signing  
14 that declaration?

15 A. No.

16 Q. Has anyone representing the defendants in this case ever  
17 offered to pay you money for your written declaration?

18 A. No.

19 Q. Have you received any money from anyone in exchange for  
20 your written declaration in this case?

21 A. No.

22 Q. Has anyone paid you for the time you spent preparing your  
23 declaration?

24 A. No.

25 Q. Has anyone paid you for the documents, copies of the



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Zambrano - cross

documents that were attached to your declaration?

A. No.

Q. Has anyone representing the defendants in this case ever offered to pay you money for your testimony in this case?

A. No.

Q. Have you received any money from anyone in exchange for the testimony you have given in this case?

A. No.

Q. Has anyone reimbursed you for your time to come to the United States and testify in this case?

A. No.

Q. Has anyone paid you for your time to prepare to testify in this case?

A. No.

Q. Mr. Zambrano, moving to a different topic, you've testified that you issued orders and rulings in other cases during your second term when you presided over the Lago Agrio case between October 2010 and February 2011.

My question to you is: Can you please identify for me the various types of orders that you issued in other cases during that time period?

THE COURT: Didn't we cover this yesterday? Mr. Booth asked and he said, well, mostly procedural. Didn't we cover this?

MR. GOMEZ: Maybe I'll be more precise, your Honor.

DB7LCHE3

Zambrano - cross

1 Q. Mr. Zambrano, are you familiar with a minute order or razon  
2 type of order?

3 A. Could you please repeat the question?

4 Q. Yes. Are you familiar with a type of order known as a  
5 minute order or razon, R-A-Z-O-N?

6 A. I don't know if I am understanding you. You're asking me  
7 if I know what a minute order is?

8 Q. Yes.

9 A. Yes.

10 Q. What is a minute order?

11 A. The minute order is the certification issued by the Court's  
12 clerk that there should be a notification or for any other  
13 reason and she's the one who certifies it.

14 Q. How would you describe that kind of order in terms of the  
15 amount of work you need to do to issue such an order?

16 A. Depending of the issue at hand.

17 Q. Are minute orders considered extensive orders?

18 THE COURT: Sustained.

19 Q. Can you estimate for me the amount of time it might take  
20 you to prepare a minute order?

21 A. Five minutes.

22 Q. Sir, do you know my client, Hugo Camacho, plaintiff in the  
23 Lago Agrio case who is also a defendant in this case?

24 A. No.

25 Q. Do you know my other client, Javier Piaguaje, also a

DB7LCHE3

Zambrano - cross

1 plaintiff in the Lago Agrio case who is a defendant in this  
2 case?

3 A. I don't know him.

4 Q. Did any plaintiff in the Lago Agrio case ever offer you  
5 anything of value in exchange for you issuing a favorable  
6 judgment to the plaintiffs?

7 A. No, nor would I ever allow it.

8 Q. Sir, did anyone who claimed to be acting on behalf of the  
9 Republic of Ecuador ever offer you anything of value in  
10 exchange for issuing a judgment favorable to the plaintiffs in  
11 the Lago Agrio case?

12 A. No.

13 THE COURT: Mr. Gomez, what you're doing could be done  
14 in two questions. Please do it.

15 Q. Dr. Zambrano, has the Republic of Ecuador offered or  
16 granted you any immunity for any testimony regarding any matter  
17 related to the Lago Agrio case?

18 A. No.

19 Q. Has the Republic of Ecuador offered or granted you any  
20 immunity for any testimony you might give in this case?

21 MR. MASTRO: Objection. Asked and answered --  
22 withdrawn.

23 A. No.

24 Q. Has the Republic of Ecuador offered or granted you  
25 diplomatic immunity for this trip to Ecuador -- to the United

DB7LCHE3

Zambrano - cross

1 States?

2 THE COURT: Mr. Gomez, look. I've given you and your  
3 colleagues great latitude and you're now abusing it, all right.

4 MR. GOMEZ: Your Honor, I have one more question and  
5 then we can deal with the recording.

6 THE COURT: Ask your question.

7 MR. GOMEZ: Break for lunch.

8 Q. Mr. Zambrano, has anyone representing the Republic of  
9 Ecuador ever suggested to you that you would not be prosecuted  
10 for anything you may testify to in this case?

11 A. No.

12 MR. GOMEZ: Your Honor, at this time I'd like to, if  
13 we could, proceed with the break for lunch. I can take care of  
14 the recording and --

15 THE COURT: Are you finished?

16 MR. GOMEZ: -- check my notes.

17 THE COURT: Are you finished with the witness but for  
18 this issue related to the recording?

19 MR. GOMEZ: Yes, that and a proffer.

20 THE COURT: What's the proffer?

21 Well, I guess we'll get the witness out of the room  
22 for that.

23 MR. GOMEZ: And that would be it.

24 THE COURT: All right. Mr. Zambrano, you can go to  
25 lunch. You need to be back here at 2 o'clock.

DB7LCHE3

1 MS. FRIEDMAN: Your Honor, could I ask for permission  
2 from Mr. Gomez to talk to Mr. Zambrano for the purpose of  
3 playing that tape? That's the logistical issue we have.

4 THE COURT: Any objection?

5 MR. GOMEZ: No.

6 MR. MASTRO: No objection, your Honor. I assume  
7 Mr. Gomez didn't.

8 THE COURT: I know, Mr. Gomez, you speak for  
9 Mr. Mastro as if of one mind.

10 Any objection, Mr. Mastro?

11 MR. MASTRO: No, your Honor.

12 THE COURT: Okay. For that limited purpose,  
13 Mr. Gomez.

14 Mr. Zambrano, you can go to lunch, and I'll continue  
15 with the lawyers briefly.

16 THE WITNESS: Thank you.

17 (Witness not present)

18 MR. GOMEZ: Could we ask the witness to wait in the  
19 hallway so that --

20 THE COURT: Ask the witness to wait in the hallway.

21 Okay. The proffer first.

22 MR. GOMEZ: Your Honor, had we been permitted to  
23 question the witness with respect to surveillance, it is our  
24 belief that the witness would have testified that he has  
25 noticed persons following both him and his companion subsequent

DB7LCHE3

1 to his issuance of the judgment in Ecuador, that he has  
2 reported his observations to the police, and, furthermore, and  
3 these are similar -- this is similar to the declarations that  
4 appear in his written declaration.

5 Furthermore, we would have probed him about his  
6 arrival to the United States and the similar observations that  
7 he made upon arrival to JFK when he came for testifying in this  
8 case.

9 THE COURT: And this is relevant to what?

10 MR. GOMEZ: This is relevant --

11 THE COURT: And his competence to be able to figure  
12 out whether he's being followed would be what?

13 MR. GOMEZ: His competence as to being followed would  
14 be the description of the actions that unknown persons took  
15 when he was entering in and out of the airport to confirm that  
16 he was being followed and similar observations when he was in  
17 Ecuador. He tested his observations is what would make him  
18 competent to testify to this.

19 In terms of relevance, your Honor, we think it would  
20 go to unclean hands.

21 THE COURT: Well, I don't. So that takes care of  
22 that.

23 Moreover, your proffer went way beyond the question to  
24 which I sustained an objection, but, in any case, that's where  
25 we are.

DB7LCHE3

1 Now, there was another issue as I remember, was there,  
2 or am I just reliving this one because it's --

3 MR. MASTRO: I think the other issue, your Honor, was  
4 the one where you agreed to take the testimony and you'll  
5 decide later whether it's --

6 THE COURT: So we've covered this all for now. Is  
7 that it?

8 MR. MASTRO: Yes, your Honor.

9 MR. GOMEZ: Yes, your Honor.

10 THE COURT: Okay. So 2 o'clock. And I'll see you  
11 then.

12 MR. MASTRO: Thank you, your Honor.

13 THE COURT: Thank you.

14 Let me add one thing to what I said. Obviously,  
15 there's a question as to whether the witness is in a position  
16 actually to say that he was being followed. But passing over  
17 that and assuming that he would say that, there's nothing to  
18 connect it to anybody, nothing whatsoever.

19 And even if there were, I ruled in a decision reported  
20 at 2011 WL 3628843 with respect to the unclean hands defense.  
21 I recognize that was in the Salazar case. The pleading to  
22 which it relates is the same pleading in this case. This was  
23 never a part of that pleading in any way. Of course, I  
24 understand the events are subsequent.

25 But the key point is that both sides argued that in

DB7LCHE3

1 order to be pertinent or sufficient for unclean hands purposes,  
2 the conduct has to have an immediate and necessary relation to  
3 the equity that the plaintiff seeks in respect of the matter in  
4 litigation. I see no sufficient relationship between any  
5 following of this witness either in Ecuador or in New York,  
6 where, as far as I know, it is perfectly lawful, and the  
7 question of whether a judgment, assuming it was obtained by  
8 fraud, is enforceable or whether equitable relief ought to be  
9 granted in relation to all of that. So this is just something  
10 that has no legitimate bearing in this case.

11 Mr. Friedman, what's on your mind?

12 MS. FRIEDMAN: Your Honor, if I could just mention as  
13 to the Ecuadorian surveillance, that relates to the pressure on  
14 judges. He was still -- there's accusations against him after  
15 he issued this judgment. There was surveillance of him after  
16 he issued the judgment and that's -- the pressure on judges --  
17 that's the connecting.

18 THE COURT: Look.

19 MS. FRIEDMAN: I just wanted to say that on the  
20 record.

21 THE COURT: Your view is you made a complaint to the  
22 Ecuadorian police. Let them deal with it.

23 MR. MASTRO: Thank you, your Honor.

24 (Luncheon recess)

25 (Continued on next page)



DB78CHE4

Zambrano - cross

AFTERNOON SESSION

2:10 p.m.

THE COURT: Mr. Gomez.

MR. GOMEZ: During the break, with the assistance of Mr. Reed Brodsky, counsel for the plaintiff, the witness listened to the audio recording, authenticated it. He initialed the CD that he listened to, and, also, he initialed the transcript, which he followed along as he heard the recording authenticating that as well.

I offer these up as Defendants' Exhibit 84 and Defendants' Exhibit 85, which have already been provided to the plaintiffs.

THE COURT: Any objection?

MR. MASTRO: No objection.

THE COURT: Is it stipulated they are what they are said to be?

MR. MASTRO: Yes, it is, your Honor.

THE COURT: Mr. Friedman.

MR. FRIEDMAN: Yes, your Honor.

THE COURT: Mr. Gomez.

MR. GOMEZ: Yes, your Honor.

THE COURT: They are received.

(Defendants' Exhibits 84 and 85 received in evidence)

MR. GOMEZ: With that I pass along the witness.

THE COURT: Redirect, Mr. Mastro.

DB78CHE4

Zambrano - cross

1 MR. MASTRO: Just before I begin, Mr. Friedman did  
2 produce a letter that was given by a lawyer to Mr. Zambrano in  
3 connection with his visa application. I would like to mark it  
4 as an exhibit for these proceedings and the parties are willing  
5 to stipulate that it is a letter that was produced in regard to  
6 this witness.

7 THE COURT: This is plaintiff's exhibit what?

8 MR. MASTRO: Plaintiff's Exhibit 6407. It is a letter  
9 from Pablo Fajardo to the embassy, dated October 7, the U.S.  
10 Embassy.

11 THE COURT: Does the defense stipulate that the letter  
12 is, in fact, a letter from Mr. Fajardo to the embassy?

13 MR. FRIEDMAN: We do.

14 MR. GOMEZ: Yes.

15 THE COURT: Any objection to its receipt?

16 MR. FRIEDMAN: No.

17 MR. GOMEZ: No.

18 THE COURT: It's received. Pass it up.

19 (Plaintiff's Exhibit 6407 received in evidence)

20 THE COURT: Let's proceed.

21 REDIRECT EXAMINATION

22 BY MR. MASTRO:

23 Q. Mr. Zambrano, before just the break, you were explaining to  
24 Mr. Gomez how you applied for your current job at the public  
25 company Refinery of the Pacific. Do you recall that testimony,

DB78CHE4

Zambrano - redirect

1 sir?

2 A. Yes.

3 Q. Sir, you said that you had to go online and fill out a  
4 proposal for the job, correct?

5 A. No.

6 Q. How did you apply for the job, Mr. Zambrano?

7 A. I'm already registered on the Internet at the portal, which  
8 is INCOP. That is the portal for public acquisitions.

9 Q. It is the portal for public jobs, and you go on that portal  
10 to apply for a public job, right?

11 A. No.

12 Q. What kind of jobs does that portal that you apply for?

13 A. One does not apply for positions by that portal. One  
14 registers at that portal, and then the entire public has access  
15 to that portal and can look at the services that one offers,  
16 and that is how professional services are then retained.

17 Q. These are professional services for public sector jobs,  
18 correct, sir?

19 A. No.

20 Q. Refinery of the Pacific, you are on the portal potentially  
21 to get a job at the Refinery of the Pacific, correct?

22 A. I did not understand that question. Could you please  
23 repeat it?

24 Q. I will rephrase it, and I just want to cut right to the  
25 chase.

DB78CHE4

Zambrano - redirect

1           On this portal you had to fill out information about  
2 your background, correct?

3 A. Previously, of course.

4 Q. And you filled out that information about your background  
5 after you ceased to be a judge, correct?

6 A. No.

7 Q. When you were trying to get the job at Refinery of the  
8 Pacific, did you have to disclose any additional information  
9 about your background in connection with that job application?

10 A. No.

11 Q. Did you ever disclose to anyone at Refinery of the Pacific  
12 that you had been a judge before you got the job?

13 A. No.

14 Q. So you didn't disclose to anybody at Refinery of the  
15 Pacific that you were removed from your judgeship by the  
16 judicial council, is that your testimony?

17 A. No.

18 Q. When you had your interview --

19           THE COURT: It is his testimony? It's not his  
20 testimony? What are we doing here?

21           MR. MASTRO: Sorry, your Honor.

22 Q. Mr. Zambrano, at any point in the job application process  
23 at Refinery of the Pacific, did you disclose to anyone at  
24 Refinery of the Pacific that you had been removed from your  
25 judgeship by the judicial council?

DB78CHE4

Zambrano - redirect

1 A. No.

2 THE COURT: Mr. Mastro, I apprehend the possibility  
3 that the use of the word "job" may be rendering this  
4 examination less than entirely useful.

5 MR. MASTRO: I understand. I am going to move on.

6 Q. Mr. Zambrano, when Mr. Booth was asking you questions, he  
7 asked you about what happened to your notes and documents when  
8 you were working on the Lago Agrio Chevron judgment. Do you  
9 recall those questions, sir?

10 A. Yes.

11 Q. You told him that you kept in your possession those notes  
12 and those series of documents approximately for about a year.  
13 After that I discarded them, it was no longer necessary for me  
14 to have it in my possession, end quote. Do you recall that  
15 testimony?

16 A. Yes.

17 Q. So that would mean you discarded those notes and documents  
18 sometime in February 2012, correct, sir?

19 A. No.

20 Q. When, approximately, did you discard them in 2012, sir?

21 A. I don't recall.

22 Q. Sir, you're the judge who certified the Lago Agrio Chevron  
23 judgment to go up on appeal in mid-2011, correct, sir?

24 A. No.

25 Q. Sir, did you ever see any of Chevron's appellate briefs

DB78CHE4

Zambrano - redirect

1 during 2011 appealing the Lago Agrio Chevron judgment?

2 A. Yes.

3 MR. MASTRO: Your Honor, may I approach the witness?

4 THE COURT: You may.

5 MR. MASTRO: I am showing the witness what has been  
6 marked as Plaintiff's Exhibit 6408, both the English and the  
7 Spanish language version of Chevron's appeal brief, dated July  
8 2011.

9 Q. Sir, do you recognize this as a copy of Chevron's appeal  
10 brief?

11 A. No.

12 Q. Sir, you read the appellate decision issued on January 3,  
13 2012, affirming your Lago Agrio Chevron judgment, correct?

14 A. Can you please repeat that question?

15 Q. At the time the appellate court affirmed your Lago Agrio  
16 Chevron judgment on January 3, 2012, did you read the appellate  
17 ruling affirming your judgment?

18 A. No.

19 THE COURT: Did you ever read it?

20 Q. Did you ever read the appellate decision?

21 A. No.

22 Q. Sir, did you disclose to anyone at Refinery of the Pacific  
23 at any time that you had been removed from your judgeship by  
24 the judicial council?

25 A. No.

DB78CHE4

Zambrano - redirect

1 Q. Sir, do you have a copy of your current employment  
2 contract?

3 A. Yes.

4 Q. Do you have any other documents relating to your current  
5 employment and how you got that employment?

6 A. In Ecuador.

7 Q. Sir, you were served with a subpoena to produce documents  
8 at this trial, correct?

9 A. No.

10 Q. Did I not serve you with a subpoena at your deposition to  
11 bring documents -- strike that.

12 Do you recall that I gave you a subpoena in English  
13 and in Spanish at your deposition to produce documents in  
14 connection with this trial?

15 A. That was in English.

16 Q. You were also served the next day with a document subpoena  
17 in Spanish, correct, sir?

18 A. False.

19 MR. MASTRO: Your Honor, there is a paragraph 22 that  
20 asks for all documents relating to his current employment.

21 THE COURT: Let's not get ahead of ourselves.

22 Just a minute. The transcript of the deposition on  
23 November 2, at page 142, appears to reflect the service of the  
24 subpoena in English and in Spanish. The witness was asked  
25 whether he saw what had just been handed to him. He said he

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Zambrano - redirect

1 was becoming aware of it. It's extensive document. I would  
2 have to read it. And it goes on on the next page.

3 Can't counsel stipulate at least that he was served  
4 with the subpoena at the deposition in English and in Spanish?

5 MR. BOOTH: Absolutely. And he was at the deposition  
6 after he came to New York, in New York, and he has not been  
7 home since, and he was given a version of the subpoena in  
8 English and in Spanish.

9 THE COURT: So stipulated, Mr. Gomez?

10 MR. GOMEZ: Yes.

11 THE COURT: Go ahead, Mr. Mastro.

12 MR. MASTRO: My only request, Mr. Zambrano, is that  
13 any documents that you have that are responsive relating to  
14 this case, to your current employment, that you produce those  
15 through the attorneys for the defendants so that we have them  
16 available to us at this trial when you return to Ecuador.

17 Thank you, sir.

18 THE COURT: Just a minute, Mr. Mastro.

19 There is a long dialogue going on between the witness  
20 and the interpreter. I would like to know what it is.

21 THE INTERPRETER: The interpreter will state that the  
22 interpreter was interpreting into Spanish what Mr. Mastro just  
23 said.

24 THE COURT: What did Mr. Zambrano say to the  
25 interpreter?



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Zambrano - redirect

1 THE INTERPRETER: This is the second interpreter. I  
2 added --

3 THE COURT: It was you? Forgive me.

4 There are two interpreters next to the witness, one  
5 standing, one sitting.

6 BY MR. MASTRO:

7 Q. Mr. Zambrano, will you produce documents you have in your  
8 possession when you get back to Ecuador that are responsive to  
9 the subpoena, give them to the defendants' lawyers so that they  
10 can be used here at this trial?

11 MR. BOOTH: Objection, your Honor. Form.

12 THE COURT: Overruled.

13 A. I don't know what documents you're requesting. If you're  
14 asking me for the contract, I can give you that.

15 Q. Sir, simple question. Mr. Zambrano, the subpoena you  
16 received at your deposition requests that you produce documents  
17 in your possession in a number of categories. I am asking you  
18 whether, when you get back to Ecuador, you will review your  
19 records and produce to us here in New York any documents you  
20 have that are responsive to the requests in the subpoena.

21 A. I cannot.

22 Q. Mr. Zambrano, I am going to ask you now some questions  
23 about Mr. Guerra.

24 Do you recall Mr. Booth asking you about Mr. Guerra  
25 helping you draft orders in some of your cases during your

DB78CHE4

Zambrano - redirect

1 second term on the Chevron case while you were working on the  
2 Lago Agrio Chevron judgment?

3 A. Yes.

4 Q. How many cases did Mr. Guerra help you draft orders on  
5 during the period October 2010 through mid-February 2011?

6 A. I don't recall.

7 Q. How many days in October 2010 did Mr. Guerra work helping  
8 you draft orders in your other cases besides the Chevron case,  
9 approximately?

10 A. I don't know.

11 Q. How about in November, how many days did he help drafting  
12 orders for you in November, approximately?

13 A. I don't know.

14 Q. Is it the same answer for December, January and February,  
15 sir?

16 A. Yes.

17 Q. He worked many days helping you draft orders during that  
18 period, October 2010 through mid-February 2011, correct, sir?

19 MR. BOOTH: Objection. Form.

20 THE COURT: Overruled.

21 A. I don't know.

22 Q. You told Mr. Booth that Mr. Guerra was in a very delicate  
23 financial situation. Do you recall that testimony, sir?

24 A. Yes.

25 Q. How much did you pay Mr. Guerra for helping you during that

DB78CHE4

Zambrano - redirect

1 period, October 2010 through February 2011, in drafting orders?

2 MR. GOMEZ: Objection. Asked and answered.

3 THE COURT: Overruled.

4 A. Nothing.

5 Q. Sir, you say that Mr. Guerra worked only on your other  
6 cases during that period, October 2010 to mid-February 2011,  
7 not on the Lago Agrio Chevron case, correct?

8 MR. BOOTH: Objection. Compound.

9 THE COURT: Rephrase it.

10 MR. MASTRO: Certainly.

11 Q. Mr. Zambrano, Mr. Guerra helped draft orders on your other  
12 cases besides the Chevron Lago Agrio case between October 2010  
13 and mid-February 2011, correct, sir?

14 A. No.

15 MR. GOMEZ: Objection. Asked and answered.

16 THE COURT: Overruled.

17 A. No.

18 Q. Did Mr. Guerra help you draft the Lago Agrio Chevron  
19 judgment between October 2010 and February 2011, sir?

20 A. Could you please repeat the question? And may the  
21 interpreter speak a little bit louder.

22 Q. Mr. Zambrano, isn't it a fact that Mr. Guerra had a  
23 master's in international environmental law, to your knowledge?

24 A. I don't know.

25 Q. Are you aware, sir, that Mr. Guerra studied environmental

DB78CHE4

Zambrano - redirect

1 law as part of his law studies?

2 A. No.

3 Q. Sir, Mr. Booth asked you whether anyone had influenced you  
4 in any way in connection with your deciding the Lago Agrio  
5 Chevron case. Do you remember that, sir?

6 A. Yes.

7 Q. And it's your testimony that you were unaware President  
8 Correa supported the Lago Agrio plaintiffs' case, correct, sir,  
9 before you issued the Lago Agrio Chevron judgment?

10 MR. BOOTH: Objection. Asked and answered several  
11 times.

12 THE COURT: I am very sympathetic to that objection,  
13 but the fact is that there have been a number of occasions when  
14 the witness has answered identical questions in absolutely  
15 irreconcilable ways. So I am going to permit it. It happened  
16 within the last five minutes.

17 A. No.

18 Q. You were aware that President Correa supported the Lago  
19 Agrio plaintiffs' case before you issued the Lago Agrio Chevron  
20 judgment?

21 A. No.

22 Q. Sir, you read the parties' --

23 THE COURT: You see Mr. Booth.

24 Go ahead.

25 MR. MASTRO: May I approach the witness?

DB78CHE4

Zambrano - redirect

1 THE COURT: Yes.

2 Q. Now, Mr. Zambrano, I am showing you what has been marked as  
3 Plaintiff's Exhibit 6405, and I will represent to the Court  
4 that it is excerpts from Chevron's alegato in the Lago Agrio  
5 Chevron case.

6 Mr. Zambrano, you know what an alegato is, correct?

7 A. Yes.

8 Q. You know that an alegato is a party's closing written  
9 argument in a case, correct?

10 A. No.

11 Q. Tell the Court what an alegato is, sir.

12 A. It is a statement of position by one of the parties  
13 regarding a specific point that is in dispute in that  
14 litigation.

15 Q. So, sir, you read the parties' alegatos in the Chevron case  
16 before you issued the Lago Agrio Chevron judgment on February  
17 14, 2011, correct?

18 A. Yes.

19 Q. It would have been improper for you under Ecuadorian law  
20 not to have read the parties' alegatos before you issued the  
21 Lago Agrio Chevron judgment, correct?

22 MR. BOOTH: Objection. Form.

23 THE COURT: Overruled.

24 A. Could you please repeat the question?

25 Q. It would have been improper under Ecuadorian law for you

DB78CHE4

Zambrano - redirect

1 not to have read the parties' alegatos before you issued the  
2 judgment in the Lago Agrio Chevron case, correct, sir?

3 A. No.

4 Q. But you did read those alegatos in the Chevron case,  
5 correct, sir, before you issued your judgment?

6 A. Yes.

7 Q. So you know that in Chevron's -- strike that.

8 So you knew before you issued the Lago Agrio Chevron  
9 judgment from Chevron's alegato that President Correa and other  
10 government officials have repeatedly offered their public  
11 support for the Lago Agrio plaintiffs, didn't you, sir?

12 MR. BOOTH: Objection. Form. The document speaks for  
13 itself.

14 THE COURT: Overruled.

15 He said earlier that he had no information on this  
16 subject. It's appropriate cross.

17 A. No.

18 Q. Sir, you knew from page 12 of Chevron's alegato --

19 THE COURT: You got your answer. Is there any  
20 objection to the document being offered not for the truth of  
21 the matter but for what it says?

22 MR. BOOTH: There is no objection to the entire  
23 alegato, not just pieces.

24 THE COURT: Do you have it, Mr. Mastro?

25 MR. MASTRO: We can enter the entire alegato. I am

DB78CHE4

Zambrano - redirect

1 only going to refer to three or four pages, but we will enter  
2 the entire alegato.

3 THE COURT: So we will have as Plaintiff's 6405 the  
4 entire alegato, English and Spanish. It is stipulated among  
5 all counsel that this exhibit, which will be provided in due  
6 course here, is the alegato and that it's admissible.

7 Correct, Mr. Gomez?

8 MR. GOMEZ: Not for the truth.

9 THE COURT: Not for the truth.

10 MR. GOMEZ: Yes.

11 THE COURT: Mr. Booth.

12 MR. BOOTH: Yes, your Honor.

13 THE COURT: Mr. Mastro.

14 MR. MASTRO: Yes, your Honor.

15 THE COURT: Received.

16 (Plaintiff's Exhibit 6405 received in evidence)

17 BY MR. MASTRO:

18 Q. Mr. Zambrano, you knew from page 12 of Chevron's alegato,  
19 that you say you read before the Lago Agrio Chevron judgment  
20 issued, that, quote, President Correa and other government  
21 officials have repeatedly offered their public support for the  
22 plaintiffs.

23 THE COURT: Mr. Mastro, first of all, I think you mean  
24 to refer to 109. But in any case, it's right there.

25 MR. MASTRO: I simply wanted to point out to the

DB78CHE4

Zambrano - redirect

1 Court --

2 THE COURT: I have got it.

3 MR. MASTRO: Multiple pages of the alegato.

4 Q. I ask you one last time before you end your testimony here  
5 today. Isn't it a fact that you knew when you issued the Lago  
6 Agrio Chevron judgment that President Correa and his government  
7 supported the Lago Agrio plaintiffs' case and wanted them to  
8 win?

9 MR. BOOTH: Objection. Asked and answered. Compound.

10 THE COURT: I think it appropriately in this  
11 circumstance goes to credibility. He is effectively being  
12 given a last chance.

13 A. No.

14 MR. MASTRO: I have no further questions for this  
15 witness.

16 THE COURT: Thank you.

17 Mr. Booth, anything further for the witness.

18 MR. BOOTH: Yes, your Honor.

19 RECROSS-EXAMINATION

20 BY MR. BOOTH:

21 Q. Hello, Dr. Zambrano.

22 Just a moment ago you were asked a question if  
23 Dr. Guerra helped draft or helped you in preparing drafts of  
24 orders in other cases for you.

25 MR. BOOTH: Let me ask a better question.



DB78CHE4

Zambrano - recross

1 Q. Did Dr. Guerra ever draft orders for you in any case?

2 A. Never.

3 Q. Did Dr. Guerra ever assist you by preparing drafts of  
4 orders for you to then use in your case?

5 A. Yes.

6 Q. The cases where Dr. Guerra would have helped you by  
7 providing drafts for you to then use in those cases, did he  
8 ever do that for you in the Chevron case?

9 A. Never.

10 Q. The alegato that you were just discussing, the Chevron  
11 alegato, as judge in the Chevron case, were you required to  
12 accept what either party argued to you in an alegato as being  
13 true?

14 A. No.

15 MR. BOOTH: No more questions. Thank you.

16 THE COURT: Mr. Gomez.

17 MR. GOMEZ: No more, your Honor.

18 THE COURT: Thank you.

19 Mr. Mastro.

20 MR. MASTRO: Nothing further for this witness, your  
21 Honor.

22 THE COURT: Mr. Zambrano, this completes your  
23 testimony for the moment. You have, I gather, been served with  
24 a subpoena that it imposes legal obligations upon you. It may  
25 be necessary for you to appear again in connection with that

DB78CHE4

Zambrano - recross

1 subpoena. Subject to all of that, you may now go.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you.

4 (Witness excused)

5 THE COURT: Next witness.

6 MR. MASTRO: Chevron calls Professor Keith Rayner.

7 KEITH RAYNER,

8 called as a witness by the plaintiff,

9 having been duly sworn, testified as follows:

10 THE DEPUTY CLERK: State your name and spell your last  
11 name for the record.

12 THE WITNESS: My name is Keith Rayner, R-A-Y-N-E-R.

13 MR. MASTRO: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 MR. MASTRO: I am handing the witness what has been  
16 marked as Plaintiff's Exhibit 4200. It is the revised and  
17 supplemental declaration of Keith Rayner, Ph.D.

18 DIRECT EXAMINATION

19 BY MR. MASTRO:

20 Q. Dr. Rayner, is this a copy of your revised and supplemental  
21 declaration in this case?

22 A. Yes, it is.

23 Q. Can I ask you to please turn to the last page, not the page  
24 19, the lovely demonstrative. I am referring to page 17 of  
25 your declaration, the last page of your declaration. Do you

DB78CHE4

Rayner - direct

1 see that, sir?

2 A. Page 19.

3 Q. Is that your signature, sir?

4 A. Page 17. Yes, it is.

5 Q. Was this revised and supplemental declaration true and  
6 correct at the time you executed it?

7 A. Yes.

8 Q. Is this declaration true and correct today?

9 A. Yes.

10 Q. Did you also prepare what has been marked 4200A, the very  
11 last page, page 19, this demonstrative?

12 A. Yes.

13 MR. MASTRO: I will identify for the record the  
14 demonstrative entitled, "Judge Zambrano could not have read the  
15 Lago Agrio record."

16 Q. Is that a true and correct copy of your demonstrative  
17 attached to this exhibit?

18 A. Yes.

19 MR. MASTRO: I offer Plaintiff's Exhibit 4200 and  
20 4200A into evidence as direct testimony of Professor Rayner.  
21 And I am prepared to turn over the witness.

22 THE COURT: Any objections?

23 MR. BOOTH: No, your Honor.

24 MR. GOMEZ: None, your Honor.

25 THE COURT: They are received.

DB78CHE4

Rayner - direct

1 (Plaintiff's Exhibits 4200 and 4200A received in  
2 evidence)

3 MR. MASTRO: Thank you, your Honor.

4 Thank you, Professor.

5 CROSS-EXAMINATION

6 BY MR. BOOTH:

7 Q. Good afternoon, Dr. Rayner. My name is Rainey Booth.

8 Dr. Rayner, how much have you been paid to date for  
9 your work on this case?

10 A. To date I have received about \$11,000.

11 Q. Do you have any bills outstanding in this case for work you  
12 have done?

13 A. Yes.

14 Q. How much?

15 A. About 30,000.

16 Q. To orient us, can you look at, I guess, the attachment at  
17 the back of your report.

18 The phrase, "Judge Zambrano could not have read the  
19 Lago Agrio record." When you used the term "could not have  
20 read" there, can you explain how you're using the term "read"?

21 A. Sure. I am using the term read to mean the standard  
22 definition of reading, that one reads and understands the words  
23 in the text with a good level of comprehension.

24 Q. If I understand your report, the way you approached this  
25 issue that you looked at was whether Judge Zambrano could have

DB78CHE4

Rayner - cross

1 read and understood all of the material in the record; is that  
2 the way you approached the question?

3 A. Yes.

4 Q. By all the material, did you mean all the text materials as  
5 opposed to photographs?

6 A. I meant primarily the text, although I think the  
7 photographs, tables, graphs would take quite a bit of  
8 processing to comprehend as well.

9 Q. In doing your analysis, did you read the entire Ecuadorian  
10 Lago Agrio record?

11 A. There are two reasons why I didn't. May I?

12 Q. You may.

13 A. The first is I wasn't asked to read it. I was asked to  
14 evaluate how many words were in the document.

15 Second, if I did read it, it would take me a year and  
16 a half to read it reading eight hours a day. It's a long  
17 record.

18 Q. So your answer is, no, you did not, is that right?

19 A. I did not read it, and I explained why.

20 Q. What you just told us about how long it would have taken  
21 you, that's your opinion based on the assumptions you made, is  
22 that correct?

23 A. Based on the assumptions of normal reading rates and  
24 comprehension.

25 Q. Is it fair to say that in this case, you were asked to form

DB78CHE4

Rayner - cross

1 an opinion on a particular issue by the attorneys for Chevron,  
2 is that fair?

3 A. Yes.

4 Q. Is it fair to say that you decided what would be the best  
5 way to approach that issue in terms of doing an analysis, is  
6 that fair?

7 A. Yes.

8 Q. In forming your opinion in this case, did you attempt to  
9 determine what would have been the best way for Judge Zambrano  
10 to have approached the Ecuadorian record to form his opinions  
11 in that case?

12 A. My understanding is that Judge Zambrano was supposed to  
13 read the record.

14 Q. That wasn't my question. I appreciate your answer.

15 Did you, as an expert in this field, did you make any  
16 attempt to determine in your own mind what would have been the  
17 best way for Judge Zambrano to approach the record to decide  
18 the issues he had to decide in the Ecuadorian court below?

19 A. No.

20 Q. The primary focus of your work outside the courtroom, can  
21 you briefly describe it for us, please?

22 A. I am a professor at the University of California, San  
23 Diego. I teach courses on the psychological of language,  
24 psychological of reading, and cognitive psychological, and I do  
25 a lot of research on reading processes and language processes.

DB78CHE4

Rayner - cross

1 Q. In terms of your primary focus in the work you do, does it  
2 primarily involve the study of how people read and comprehend;  
3 is that at least a primary part of it?

4 A. Yes.

5 Q. Is one of the primary fields that you study is to  
6 help -- strike that.

7 Is one of the primary reasons for your work to help  
8 people read better, is that one of the reasons?

9 A. That may be a long-term goal. The more immediate goal is  
10 to try and understand what the mental processes are when people  
11 read to form, for example, a model of the reading process.

12 Q. Now, I think you covered some of this in your report. Let  
13 me ask you, the speed at which someone can read a document  
14 depends on various things, right?

15 A. Correct.

16 Q. One of the things that might impact the speed would be the  
17 type of document itself, correct?

18 A. Yes. Reading rates will vary at the functions of the  
19 material one is reading.

20 Q. That may have to do with how complicated the material is?

21 A. Yes.

22 Q. How dense the words are on the page, how many words per  
23 page?

24 A. Yes.

25 Q. Another factor that might impact the speed at which someone

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Rayner - cross

1 might read a document would have to do with the person  
2 themselves, right?

3 A. There is variability among people in terms of how fast they  
4 read.

5 Q. Did you have any information about Judge Zambrano, any  
6 specifics about him in his reading abilities in this case?

7 A. I think I can assume that Judge Zambrano probably reads  
8 between 200 and 400 words per minute since about 98 percent of  
9 the population reads in that range.

10 Q. Thank you for that answer. That wasn't my question.

11 A. I have not met Judge Zambrano.

12 Q. Isn't it true another factor that will affect the speed at  
13 which someone reads a page would be how much information the  
14 person is trying to extract from that page, correct?

15 A. You're getting into a distinction now between reading and  
16 skimming. So if you're skimming, you can go a lot faster than  
17 if you're reading, but skimming comprehension goes to pieces.

18 Q. Can you define skimming, as you're using the term?

19 A. Skimming means going at rates over 400 words per minute.  
20 You're not really processing all of the words, you're trying to  
21 get the gist, but you're not getting any of the details.

22 Q. Is there a word for the process, for example, if I had a  
23 page and on the page I was looking for a specific thing, for  
24 example, a phrase, and I am not trying to read the page for  
25 content, either reading or skimming, I am just looking for



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Rayner - cross

specific phrases, is there a word for that?

A. It's sort of an example of a digital search.

Q. Did you make any assumptions in this case of how long it would take a person to search documents looking for particular things?

A. Again, the task that I was assigned was how long would it take to read this material.

Q. So the answer to the question is you did not consider that variable, is that right?

A. That's right.

Q. For the purpose of doing your analysis, did you account at all for the possibility that Judge Zambrano might have spent a longer period of time with certain documents?

A. With certain documents?

Q. Right.

A. Can you explain what you mean?

Q. That was a bad question. For example, if the person was to read the document and then also take notes from the document, did you account in your analysis for Dr. Zambrano spending additional time for something like that, taking notes on a document or rereading a document for content?

A. No, I didn't, but obviously that's going to add to the amount of time it's going to take to get through a document.

(Continued on next page)

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Rayner - cross

1 Q. Did you in your analysis account for the possibility that  
2 Dr. Zambrano would find some documents he didn't need to read  
3 at all once he looked at the document and said I don't need to  
4 read that at all, did you account for that?

5 A. Not directly, no.

6 Q. There's an indication in your report that you excluded for  
7 the purpose of your calculation about 5 percent of the pages;  
8 is that right?

9 A. That's correct.

10 Q. And what was the reason for that?

11 A. Because they contained photographs or graphs, tables.

12 Q. And how did you arrive at 5 percent?

13 A. By sampling the text.

14 Q. What was page 7 on the version I had, paragraph 11E. I  
15 think this is a different version. Let me see if I can find  
16 it. Can you look at your report and help me. Here it is, here  
17 it is. It is page 7. It is paragraph 11E.

18 There's an indication, first of all, let me let you  
19 get there. Can you tell me when you're there?

20 A. I just want to make sure I'm in 11E, you said, yes?

21 Q. I think it's at the bottom of paragraph 11E.

22 A. Yeah.

23 Q. Talks about, for example, on page 39, do you see that  
24 sentence, the last sentence in the paragraph?

25 A. Yeah.

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Rayner - cross

1 Q. And it indicates more than 100 expert reports submitted,  
2 and then it uses the word or it says the phrase, have been  
3 considered by the judge in handing down this ruling.

4 Did you have any information as to what was meant by  
5 considered?

6 A. No. I do not know for sure.

7 Q. Did you make any assumptions about what the word considered  
8 meant in that context?

9 A. No.

10 Q. Did you make -- did you do anything to try to compare  
11 considered with the definition of reading that you've given us  
12 to use in this case?

13 A. Again, I repeat, the task that was assigned to me was to  
14 figure out how long it would take to read this document.

15 Q. Did you in doing your analysis make any attempt to  
16 determine what portion of the record, the Ecuadorian record,  
17 contained documents that were copies of other documents?

18 A. I must say I'm not sure about that. In skimming through  
19 the text, I didn't see a lot of duplications, but I can't say  
20 that I know for sure.

21 Q. And how much of the text did you skim through -- I mean --  
22 I'm sorry.

23 What percentage of the Ecuadorian record do you  
24 believe you skimmed through?

25 A. I think I've looked at about a fourth of the total pages.

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Rayner - cross

1 Q. And was it any particular year, year set, or was it random,  
2 your selection?

3 A. It was pretty random, totally random actually.

4 MR. BOOTH: May I have one second.

5 No more questions.

6 THE COURT: We'll take our break here.

7 (Recess)

8 THE COURT: All right, Mr. Gomez.

9 MR. GOMEZ: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. GOMEZ:

12 Q. Good afternoon, Dr. Rayner.

13 Just to clarify part of the record. In your earlier  
14 testimony in response to questions by Mr. Booth where Mr. Booth  
15 asked you about searching a document for certain phrases, did  
16 you use the term visual search or digital search?

17 A. Visual search.

18 Q. Thank you. Sir, were you provided for purposes of your  
19 analysis any information as to what amount of the record  
20 constituted evidence and what amount constituted legal argument  
21 under Ecuadorian law?

22 A. I was provided the entire record but not provided that  
23 information specifically.

24 Q. Were you provided any information as to what portion of the  
25 record was relevant to the issues that Judge Zambrano had to

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Rayner - cross

1 decide in the judgment?

2 A. No. I assumed the entire record was relevant.

3 MR. GOMEZ: Nothing further, your Honor.

4 MR. MASTRO: Nothing further, your Honor.

5 THE COURT: You're excused, Mr. Rayner or Dr. Rayner.

6 Thank you.

7 (Witness excused)

8 MR. MASTRO: Thank you, Professor.

9 THE COURT: Next witness.

10 MR. MASTRO: Your Honor, Chevron calls Rhonda Zygocki.

11 And Ms. Zygocki will be put on the stand by my colleague Chris  
12 Joralemon.

13 THE COURT: You spell it like Brooklyn?

14 MR. JORALEMON: Correct, your Honor.

15 RHONDA ZYGOCKI,

16 called as a witness by the Plaintiff,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. JORALEMON:

20 THE COURT: Go ahead, Mr. Joralemon.

21 MR. JORALEMON: Thank you. May I approach, your  
22 Honor?

23 THE COURT: You may.

24 Q. Good afternoon, Ms. Zygocki. I've handed you what's been  
25 marked Plaintiff's Exhibit 5800.

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Zygocki - direct

1 Do you recognize this document?

2 A. I do.

3 Q. What is it?

4 A. It is my testimony submitted to this court.

5 Q. Okay. If you turn to page 10 of Exhibit 5800, the last  
6 page of the document, is that your signature?

7 A. It is.

8 Q. And, Ms. Zygocki, when you executed this document on  
9 October 30, 2013, as indicated on page 10, were all the  
10 statements in there true and accurate to the best of your  
11 knowledge?

12 A. They are.

13 Q. And as you sit here today, are all the statements contained  
14 in Exhibit 5800 true and accurate to the best of your  
15 knowledge?

16 A. Yes, they are.

17 MR. JORALEMON: Your Honor, Chevron offers Plaintiff's  
18 Exhibit 5800.

19 MS. FRIEDMAN: Your Honor, we have some issues about  
20 this.

21 THE COURT: I know. Why haven't they been solved?  
22 I'm not blaming you.

23 MS. FRIEDMAN: I can tell the Court we did have some  
24 meetings about this and both sides have different views on  
25 things. That's what we have judges for, I guess.

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Zygocki - direct

1 THE COURT: But we don't have judges to decide  
2 disputes about what number you call to get information to find  
3 somebody else's phone number. That's about what we're down to  
4 here.

5 MS. FRIEDMAN: Well, if I could phrase the issue for  
6 the Court as I see it, what would be helpful to us is to have  
7 some guidance on, as I see it, paragraph 6 through 18 are  
8 essentially just repeating press releases or paraphrasing press  
9 releases and --

10 THE COURT: Without holding me precisely to the  
11 paragraph numbers, I have a general sense that you're right  
12 about that. And it's an argument. It's somebody's trial  
13 brief.

14 MS. FRIEDMAN: And, again, I don't want to create more  
15 trouble. But my point, your Honor, is if the Court could make  
16 a decision about whether it wants to police the media war that  
17 took place between these people, that's what I see shaping up  
18 here is, you know, press releases on both sides and each side  
19 arguing about what they mean. You have in the record the press  
20 releases themselves.

21 So that's our position, your Honor. But if it comes  
22 in and I cross-examine her on this, I will. But I just think  
23 it doesn't add anything.

24 THE COURT: Mr. Joralemon.

25 MR. JORALEMON: With all due respect to Mr. Friedman,

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Zygocki - direct

1 this is not simply a PR war. Your Honor said on the first day  
2 of trial Chevron did not, is not bringing this action because  
3 there is a public relations strategy on the other side.

4 Ms. Zygocki is a senior executive at Chevron, had  
5 oversight responsibilities for public relations and government  
6 affairs during the relevant period.

7 The paragraphs cited by Mr. Friedman are specific  
8 press releases quoted, not paraphrased, quoted that were issued  
9 by Mr. Donziger and those working with him and they  
10 specifically relate to Mr. Cabrera's independence and  
11 escalating damages figures that originated with Mr. Russell and  
12 later with Mr. Cabrera.

13 We are not putting Ms. Zygocki's statement in to  
14 establish the falsity of those statements. There's plenty of  
15 other evidence for that. Ms. Zygocki is simply testifying  
16 these statements were made. She was aware of them. Chevron  
17 was aware of them contemporaneously. She's testifying about  
18 the impact those statements had on Chevron.

19 THE COURT: The press releases are all in the record,  
20 true or false?

21 MR. JORALEMON: All of the press releases are, yes.  
22 Mr. Donziger's testimony before Congress where he cites  
23 Mr. Cabrera is not in the record, as I understand it.

24 THE COURT: Why not?

25 MR. JORALEMON: We will move it into the record as



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Zygocki - direct

1 part of Ms. Zygocki's testimony.

2 THE COURT: Do you have any objection to the testimony  
3 coming in?

4 MS. FRIEDMAN: No, your Honor.

5 THE COURT: All right. So, look, Mr. Joralemon, what  
6 you're seeing in my hesitation is the stupendous level of  
7 frustration with both sides about stuff like this.

8 MS. FRIEDMAN: Can I ask, can I suggest something,  
9 your Honor?

10 THE COURT: Yeah.

11 MS. FRIEDMAN: If you look at the last I think  
12 paragraphs 22 and 23, if you would give us some guidance. If  
13 you think those paragraphs are helpful to anything you have to  
14 decide, we can put them in issue and I can cross-examine her  
15 about those. And if they're not, I don't think there's  
16 anything to talk about here.

17 THE COURT: Who wants to address paragraphs 22 and 23  
18 from the plaintiff's side?

19 MR. JORALEMON: I'd be happy to speak to those  
20 paragraphs. You mean other witnesses?

21 THE COURT: No, no, no. Lawyer.

22 MR. JORALEMON: That would be me. And, your Honor, as  
23 I just said, Ms. Zygocki's testimony is being offered to  
24 discuss the impact that defendant's public pressure campaign  
25 had on Chevron.

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Zygocki - direct

1           Now, to be clear once more, when I say public pressure  
2       campaign, I'm not talking about a public relations strategy.  
3       There are very specific allegations about falsehoods that  
4       defendants here have spread. And Ms. Zygocki is not being  
5       offered to prove the falsity or truth of those statements but,  
6       rather, the statements were made about Mr. Cabrera's  
7       independence, about the damages figure that Mr. Cabrera offered  
8       and then Mr. Russell offered that they used.

9           THE COURT: Mr. Joralemon, I appreciate the  
10      earnestness and the commitment to the client, I do, for the  
11      lawyers on both sides in this case.

12           A sentence such as, Chevron's core values place the  
13      highest strategic importance on protecting its people, what  
14      does that actually mean that this witness can testify to of her  
15      personal knowledge? Does this mean she's here as an expert  
16      witness about what each and every person at Chevron believes  
17      are the core values? What core values mean? What level of  
18      importance each one attached to whatever that person thought  
19      were core values?

20           MR. JORALEMON: Sure. I understand your question,  
21      your Honor.

22           Ms. Zygocki has been with the company for over 33  
23      years. She is a senior executive. She is offering testimony  
24      under 701 to this point. It certainly is a rational view that  
25      she has based on her experience, and it helps put the context

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Zygocki - direct

1 of her testimony.

2 THE COURT: Look, no disrespect to Ms. Zygocki.  
3 Enough already with this stuff on both sides. All right. You  
4 want to offer the testimony to Congress, offer it.

5 MR. JORALEMON: Okay.

6 THE COURT: What is it?

7 MR. JORALEMON: There are a couple other things that I  
8 believe are not quite in the record, your Honor.

9 THE COURT: So let's deal with that.

10 MR. JORALEMON: Okay. So the congressional testimony  
11 is at paragraph 12. The other --

12 THE COURT: So that's Exhibit 1130. Now, isn't that  
13 actually in the record?

14 MS. FRIEDMAN: I think it is, your Honor.

15 THE COURT: Yes?

16 MR. JORALEMON: All of the exhibits?

17 MS. FRIEDMAN: Yes.

18 THE COURT: So all the exhibits are in the record. So  
19 let's go through and see what actually this witness, who I  
20 assume is quite a distinguished and experienced executive, no  
21 disrespect intended to her or anybody else, has to contribute  
22 to the resolution of any facts in issue.

23 MR. JORALEMON: If I can clarify one point, your  
24 Honor. Sorry I wasn't clear. When I speak about the impact  
25 within Chevron that the public pressure campaign, I'm speaking

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Zygocki - direct

1 directly to the issue of irreparable harm. As you know,  
2 Chevron is seeking injunctive relief here. So this goes beyond  
3 the issue of the monetary impact. Ms. Zygocki as a senior  
4 executive can speak to the irreparable harm of the public  
5 pressure campaign.

6 THE COURT: All right. I hate to do this. This is a  
7 waste of time and both sides are guilty of this, but I'm really  
8 at my wit's end with it.

9 Let's look at paragraph 4, the last two sentences.  
10 There's no dispute that Mr. Donziger and others have made these  
11 various statements, right? They're all in the record.

12 MS. FRIEDMAN: Absolutely.

13 THE COURT: Right, Mr. Joralemon?

14 MR. JORALEMON: Agreed.

15 THE COURT: So we don't need that.

16 That she received internal communications circulating  
17 copies of them. Don't need that either, right?

18 MR. JORALEMON: That was offered for the foundation of  
19 this witness.

20 THE COURT: It was just offered because you'd like it  
21 in the trial brief and you'd prefer to have something in a  
22 witness statement. It's obvious. It's blindingly obvious.

23 Paragraph 5. She's observed patterns. What is she, a  
24 pattern recognition expert?

25 Please understand this is not personal, Ms. Zygocki.

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Zygocki - direct

1 MR. JORALEMON: No, but, again.

2 THE COURT: You haven't sat through what I've sat  
3 through.

4 MR. JORALEMON: Your Honor, that's a perfect example  
5 of 701 testimony. Ms. Zygocki in her role and her experience  
6 has a rational basis for observing a pattern of their public  
7 pressure campaign and it goes again to irreparable harm.

8 THE COURT: I'll decide if there was a pattern. You  
9 put the statements in. There is or there isn't.

10 MR. JORALEMON: Correct.

11 THE COURT: All right. I don't need that.

12 Paragraph 6. You want her to testify that he issued  
13 press releases.

14 That's undisputed, right, Mr. Friedman?

15 MS. FRIEDMAN: Yes.

16 THE COURT: Okay.

17 Paragraph 7, talking about an Amazon defense  
18 coalition. Ms. Hinton and Amazon Watch issuing a press  
19 release. No dispute about that, right?

20 MS. FRIEDMAN: Correct.

21 THE COURT: Paragraph 8. What in there is disputed,  
22 sir?

23 MS. FRIEDMAN: Nothing.

24 THE COURT: Mr. Joralemon?

25 MR. JORALEMON: Your Honor, I will try to expedite

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Zygocki - direct

1 this. If they're willing to stipulate to paragraphs 1 through  
2 18 that they're not in dispute, then we certainly don't need to  
3 have Ms. Zygocki testify about those things.

4 MS. FRIEDMAN: It's a little different. As we go on,  
5 your Honor, there are some characterizations of things that  
6 we're not willing to stipulate to.

7 THE COURT: Look, the documents are all in. They're  
8 all stipulated as authentic. They are what they purport to be,  
9 right?

10 MS. FRIEDMAN: Correct.

11 THE COURT: Mr. Gomez?

12 MR. GOMEZ: Correct.

13 THE COURT: Right. Are you willing to trust me to  
14 just disregard the advocacy and the stuff that I would describe  
15 privately in different terms?

16 MR. JORALEMON: We certainly trust you, your Honor,  
17 yes.

18 THE COURT: Mr. Friedman?

19 MS. FRIEDMAN: Well, I don't know what that means.  
20 What we're asking is that you either strike this or tell us  
21 which part you think is relevant and then I'll address that in  
22 cross. I think it ought all be stricken and you've got the  
23 documents.

24 THE COURT: Look, you are wasting my time, both of  
25 you. It's gratuitous and it's nonsense. I brought this up

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Zygocki - direct

1 with respect to Hinton. You said it was justified by Zygocki.  
2 I said get together and resolve it. It is so obvious as to how  
3 it should be resolved that a first year law student could get  
4 this resolved and I want it resolved without my sitting here  
5 having to edit it.

6 And do you read me, both of you?

7 MR. JORALEMON: Absolutely.

8 MS. FRIEDMAN: I do too, your Honor.

9 THE COURT: All right. Do it.

10 Now, Mr. Joralemon, if there is anything in here that  
11 you think you need as to which this is a competent witness, I  
12 want to hear what it is now.

13 MR. JORALEMON: Certainly. It begins at paragraph 19.  
14 It's the section entitled Effects of Defendant's Public  
15 Pressure Campaign. Nineteen through 23, your Honor.

16 THE COURT: All right. I'll take those paragraphs for  
17 what they're worth, as well as paragraphs 1 through 3. Let's  
18 go ahead.

19 MR. JORALEMON: Thank you, your Honor. Pass the  
20 witness.

21 THE COURT: Understand, Mr. Joralemon, I understand  
22 you were carrying out orders.

23 MR. JORALEMON: Thank you, your Honor.

24 THE COURT: I don't hold this as a personal -- what's  
25 the right word -- failure on your part.

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Zygocki - direct

1 MR. JORALEMON: Thank you. I appreciate that.

2 THE COURT: Okay. Now let's go and let's keep it  
3 short.

4 MS. FRIEDMAN: Yes, your Honor. So, your Honor,  
5 what's in play, as I understand it, is 1 through 3 and 19 to  
6 23. Is that correct?

7 THE COURT: Correct.

8 You earned a drink tonight, Mr. Joralemon.

9 MR. MASTRO: I'm buying and apologizing.

10 THE COURT: You better. You better buy one for  
11 Mr. Friedman too because, you know, after yesterday or the day  
12 before you owe him one.

13 MR. MASTRO: I will buy him one too, your Honor, in  
14 the spirit of harmony here.

15 CROSS-EXAMINATION

16 BY MS. FRIEDMAN:

17 Q. Ms. Zygocki, my name is Rick Friedman. I represent  
18 Mr. Donziger.

19 Do you have your witness statement up there with you?

20 A. I do.

21 Q. Would you mind turning to paragraph 20, please. On page 9,  
22 you say, I personally have expended and continue to expend  
23 incalculable hours and resources.

24 Do you see that sentence?

25 A. Yes.



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Zygocki - cross

1 Q. Working to mitigate the unjustified threats and harm posed  
2 by the misinformation campaign.

3 Can you tell us what you mean when you are referring  
4 to unjustified threats and harm?

5 A. I believe it refers directly to the unjustified threats to  
6 the company's reputation and financial stature that a  
7 \$19 billion judgment would create for the company.

8 Q. Did you, before the judgment came out, did you view the  
9 lawsuit itself down in Ecuador as an unjustified threat?

10 A. Yes, we did.

11 Q. And unjustified harm?

12 A. Yes, we did.

13 Q. All right. And you're not in your testimony making any  
14 distinction in terms of the harm caused by the lawsuit itself  
15 versus the judgment versus the Cabrera false statements that  
16 you've alleged, you're not making those kinds of distinctions  
17 in your testimony or are you?

18 MR. MASTRO: Objection to the form, your Honor.

19 THE COURT: Overruled.

20 A. I see them as all connected in that regard.

21 Q. All right. And when you talk about misinformation, without  
22 going through all the underlying material, just so we  
23 understand your position, you're not saying -- well, let me ask  
24 it this way: Are you saying there was no pollution in the  
25 Oriente region?

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Zygocki - cross

1 MR. MASTRO: Objection, your Honor, scope.

2 THE COURT: Sustained. We are not doing that,

3 Mr. Friedman. We are not trying the Ecuadorian pollution case  
4 through the head of public affairs at Chevron.

5 MS. FRIEDMAN: I am just trying to get at what  
6 misinformation she's referring to, your Honor. Maybe I'll ask  
7 it a different way.

8 THE COURT: Look, Mr. Friedman, it's Chevron's  
9 position that this, subject to various limitations that were  
10 articulated in pretrial, your client has done 'em wrong, sir,  
11 and vice versa. Now, I understand that that's what she's  
12 talking about.

13 MS. FRIEDMAN: All right.

14 Q. Ms. Zygocki, are you a stockholder in Chevron?

15 A. Yes, I am.

16 Q. And can you tell us when the pressure campaign started?

17 A. I would say the campaign, there has always been an element  
18 of the pressure campaign from the time the \$6 billion number  
19 was first put out by the plaintiffs.

20 But it escalated quite a bit first in the 2008 time  
21 frame when the Cabrera report came out and the number was 16,  
22 coupled with some very high profile kind of public recognition  
23 of, for instance, Pablo Fajardo and Luis Yanza in terms of CNN  
24 Heroes and Goldman awards for environmental excellence.

25 But in 2009, the campaign reached a very high heights

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Zygocki - cross

1 when the second version, I guess, or the \$27 billion Cabrera  
2 report was out there, coupled with the movie Crude and the 60  
3 Minutes segment, that it was the combination of the damages  
4 claim and, you know, what we believed to be very misinformation  
5 and false information in that regard with a very high profile  
6 public media campaign that really exaggerated or I would call  
7 described these harms in very strong terms.

8 On top of that media campaign, we were experiencing  
9 between 2008 and 2010 on average a press release a week issued  
10 through Chevron Toxicology. So every week there was a different  
11 message coming out, many of them grounded in the Cabrera  
12 report. We didn't know which way they were coming from. And  
13 around this damages assessment there was descriptions accusing  
14 us of everything from lying to shareholders, misleading  
15 Congress, cultural genocide, and human rights abuses.

16 So it was the combination of those things that the  
17 pressure came up and, as a result, more and more of our  
18 stakeholders, whether they be employees, government partners,  
19 community partners, and policymakers began to ask questions on  
20 that and we were responding to these things in multiple  
21 jurisdictions.

22 Q. So is the answer to my question in 2007?

23 A. I think the height of the campaign was in 2009 and the ramp  
24 up began I would say 2007.

25 Q. Okay. That was my question, when did it start. So the

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Zygocki - cross

1 answer is 2007?

2 A. Yes.

3 Q. And how much has Chevron stock price increased since 2007?

4 MR. JORALEMON: Objection, your Honor, relevance.

5 MS. FRIEDMAN: They're arguing they've been harmed by  
6 this campaign, your Honor. She references stockholders and all  
7 sorts of other things.

8 MR. JORALEMON: That mischaracterizes her testimony.

9 THE COURT: Look, unless you are proposing, and I  
10 think it quite clear because you've indicated what the rest of  
11 your evidence is going to be, to bring in a qualified expert to  
12 testify that the stock price wouldn't have been higher but for  
13 this campaign, assuming for the sake of discussion that that's  
14 a relevant measure, this is going nowhere because it has no  
15 value. Right?

16 MS. FRIEDMAN: Well, I think it would be plaintiff's  
17 burden to show some harm, yes. What I'm trying to show is that  
18 they are unable to show any harm through the cross-examination.

19 We stipulate to that, stipulate to the stock price --

20 THE COURT: I propose a deal. They'll stipulate  
21 there's no harm if you'll stipulate there's no merit to your  
22 defense.

23 MS. FRIEDMAN: I understand.

24 THE COURT: I'm sure we could work that out.

25 MR. JORALEMON: Your Honor, just for the record, we've

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Zygocki - cross

1 already worked out a stipulation about certain harms,  
2 attorneys' fees, and Chevron is not seeking stock price  
3 differential as damages.

4 THE COURT: Yes, we understand that.

5 MS. FRIEDMAN: I'll sit down, your Honor.

6 THE COURT: Mr. Gomez. Thank you.

7 CROSS-EXAMINATION

8 BY MR. GOMEZ:

9 Q. Good afternoon, Ms. Zygocki.

10 Ms. Zygocki, would you please direct your attention to  
11 paragraph 20 of your statement, page 9, the sentence that  
12 begins, as a senior executive with Chevron.

13 Do you see that sentence, ma'am?

14 A. Yes, I do.

15 Q. Ma'am, in that sentence you refer to hours and resources  
16 working to mitigate the unjustified threats.

17 Do you see that phrase?

18 A. Yes, I do.

19 Q. Can you tell me, do you have any quantification of the  
20 hours that you reference in that sentence?

21 A. I can estimate that during the time, particularly I would  
22 say 2009 and 2010, which I believe and observed as the height  
23 of this PR campaign, I personally in my executive role spent  
24 more than the majority of my time dealing with issues with  
25 respect to the Ecuador case.

DB7LCHE5

Zygocki - cross

1 Q. Have you quantified in any written document as you spent  
2 those hours how many hours per day you spent as you described?

3 A. No, I have not.

4 Q. And turning to the reference to resources in that same  
5 sentence --

6 A. Yes.

7 Q. -- what quantification have you kept of the resources that  
8 you refer to in that particular statement?

9 A. I have not kept a quantification of those resources.

10 Q. Thank you. Moving further down into in that paragraph, the  
11 last sentence begins with, these and other activities also have  
12 demanded the time, attention, and focus of many other members  
13 of the company's executive management.

14 Do you see that phrase, ma'am?

15 A. Yes, I do.

16 Q. Once again, with respect to the time that you refer to in  
17 that phrase, what steps have you taken to quantify that time?

18 A. I have not taken any steps to quantify that time.

19 Q. And what steps have you taken to quantify the attention  
20 that you refer to in that phrase?

21 A. I have not taken steps to quantify the attention.

22 Q. And have you taken any steps to quantify the focus that you  
23 referred to in that phrase?

24 A. No, sir, I haven't.

25 Q. Moving to the next paragraph, there is the final sentence

DB7LCHE5

Zygocki - cross

1 reads, some, including our lawyers, working on the litigation  
2 in Ecuador. Do you see that phrase, ma'am?

3 A. Yes.

4 Q. I want to direct your attention to the portion of the  
5 phrase which reads, even have feared for their physical safety  
6 or have been subjected to criminal charges brought against them  
7 by the Ecuadorian government at the instigation of Mr. Donziger  
8 and others working with him.

9 Do you see that, ma'am?

10 A. I do.

11 Q. Ma'am, do you -- is your basis for that statement  
12 information that has been reported to you only or have you  
13 actually observed that?

14 A. It has been information reported to me.

15 (Continued on next page)

DB78CHE6

Zygocki - cross

1 Q. Moving to the next paragraph 22, you refer in the second  
2 sentence to the phrase "personal attacks like those leveled by  
3 Mr. Donziger and others working with him." Do you see that  
4 phrase?

5 A. Yes, I do.

6 Q. Again, is this information that has been reported to you,  
7 ma'am?

8 A. These are threats that I have observed.

9 Q. Is it your testimony that Mr. Donziger has threatened you  
10 personally, ma'am?

11 A. Mr. Donziger has not threatened me personally.

12 Q. So what have you observed?

13 A. I have observed personal attacks on my CEO. I have  
14 observed personal attacks on a board member.

15 Q. Is that all?

16 A. I have observed personal attacks on members of our  
17 government relations team, some of our government advisors,  
18 political consultants.

19 Q. These personal attacks that you have observed, have they  
20 all been in press releases?

21 A. They have been in press releases. They have been through  
22 attendance of some of these groups at our annual meetings.

23 Q. In an annual meeting, have you seen someone attack the CEO  
24 of your company, ma'am, is that your testimony?

25 A. I have seen them attack our CEO with words.



DB78CHE6

Zygocki - cross

1 Q. So you have seen someone say something to your CEO that you  
2 didn't like, is that correct?

3 MR. JORALEMON: Objection. Form.

4 THE COURT: I think this witness is sufficiently  
5 experienced to give an appropriate response. Overruled.

6 A. Yes, I have.

7 Q. Would the same qualify for the personal attack against the  
8 board member that you observed someone say something to the  
9 board member that you didn't like?

10 A. I received a letter from one of these groups that was sent  
11 to a board member that referenced a threat.

12 THE COURT: A threat of physical harm or some other  
13 kind of threat?

14 THE WITNESS: A threat of protest at their residence.

15 MR. GOMEZ: I have nothing further.

16 THE COURT: Thank you.

17 Mr. Joralemon.

18 JUROR: Nothing further.

19 THE COURT: Ms. Zygocki, thank you very much. Sorry  
20 you had to go through this, as I am sorry that any witness  
21 called in in these circumstances for these kinds of unnecessary  
22 purposes has to go through it.

23 (Witness excused)

24 THE COURT: And that includes in large measure  
25 Ms. Hinton.

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Zygocki - cross

1           Let's go. Anything else?

2           MR. MASTRO: Yes, your Honor. Chevron calls Weston  
3 Anson.

4           WESTON ANSON,

5           called as a witness by the plaintiff,

6           having been duly sworn, testified as follows:

7           THE DEPUTY CLERK: State your name and spell your last  
8 name for the record.

9           THE COURT: Before we commence the direct, just to be  
10 absolutely clear about what I just said to Ms. Zygocki. There  
11 was almost nothing in her statement that was necessary, in  
12 significant measure. Whatever I allowed to come in was  
13 argument. In light of all of the discussion about larding up  
14 the witness statements with characterizations, matters of which  
15 witnesses lacked personal knowledge and argumentation, I am  
16 sorry that Chevron's counsel called her. The cross-examination  
17 was tendentious, but it was provoked, and it was a waste.  
18 That's fundamentally my point.

19           MR. FRIEDMAN: Can I address this witness for a  
20 second. He is an unjust enrichment expert, which I think has  
21 been taken out of the case.

22           THE COURT: I have not seen a statement so I don't  
23 know what it is.

24           MR. MASTRO: Just to be clear, this witness is here as  
25 a damages expert to speak to potential and actual harms and

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Anson - direct

1 future harms from both enforcement, and the potential that  
2 enforcement activities are successful, to the extent they have  
3 already gotten traction, how that adversely affects or harms  
4 Chevron. We tried to stipulate to his testimony too, just like  
5 we did with Mr. Ryan. We didn't want to have to call him.

6 THE COURT: So the whole point is that, if and to the  
7 extent judgment is enforced, there is irreparable harm?

8 MR. MASTRO: That's part of it. Also, the issues  
9 would be the trademarks and the royalties associated with it is  
10 causing and will cause harm to Chevron going forward from the  
11 enforcement activity in Ecuador right now. And that was the  
12 point of his testimony, to establish there is irreparable harm  
13 that will occur to Chevron.

14 THE COURT: Mr. Friedman, isn't that obvious?

15 MR. FRIEDMAN: He was designated as an unjust  
16 enrichment expert. The direct testimony we were given  
17 addresses only the IP, the trademark stuff in Ecuador.

18 THE COURT: Nobody has bothered to give me this direct  
19 testimony so I don't really know what we are talking about.

20 MR. MASTRO: It addresses that before your Honor had  
21 ruled on unjust enrichment, because that's an issue in which  
22 they have gotten some traction, but he speaks generally to  
23 enforcement activities. And we sent a bare-bones stip that  
24 would have addressed this and Mr. Friedman rejected it. We  
25 tried to avoid having to call this witness at all, and we think

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Anson - direct

1 it is something that should be stipulated to. We are not  
2 attempting, your Honor, to reargue unjust enrichment through  
3 this witness.

4 THE COURT: What it is is you haven't revised the  
5 statement in light of the fact that that is out of the case, or  
6 never was in it.

7 MR. MASTRO: What we did do was we sent a proposed  
8 stipulation to try and get this witness's testimony.

9 THE COURT: What is the problem, Mr. Friedman?

10 MR. FRIEDMAN: Your Honor, I have five minutes or less  
11 of questions. If this is in the case, it's in the case. I  
12 will ask my five minutes of questions.

13 THE COURT: I don't know what the "this" is.

14 MR. FRIEDMAN: I don't see the relevance, but if it's  
15 relevant, I have got questions.

16 THE COURT: Just to take an example, the company owns  
17 trademarks, right?

18 MR. FRIEDMAN: It doesn't own these trademarks.

19 THE COURT: A subsidiary owns the trademarks?

20 MR. FRIEDMAN: A subsidiary owns the trademarks.

21 THE COURT: The trademarks are what?

22 MR. FRIEDMAN: Things relating to oil. I don't think  
23 it really matters what they are.

24 MS. MALONEY: They are trademarks relating to  
25 industrial lubricants in Ecuador only.

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Anson - direct

1 MR. FRIEDMAN: I think it would be faster to just  
2 submit his statement. I will ask a few questions and we will  
3 be done.

4 THE COURT: Is that right, Mr. Gomez?

5 MR. GOMEZ: Yes.

6 THE COURT: Let's go.

7 DIRECT EXAMINATION

8 BY MS. MALONEY:

9 Q. Good afternoon, Mr. Anson.

10 A. Good afternoon.

11 Q. Mr. Anson, did you submit a declaration in connection with  
12 this case in this trial?

13 A. Yes, I did.

14 MS. MALONEY: May I approach, your Honor?

15 THE COURT: Yes.

16 Q. Mr. Anson, I am showing you what is marked as Plaintiff's  
17 Exhibit 6000 for identification. Would you take a moment to  
18 look at it, please?

19 MS. MALONEY: For the record, your Honor, 6000 for  
20 identification is 20 pages under a heading direct testimony of  
21 Weston Anson.

22 Q. Do you recognize the document, Mr. Anson?

23 A. I do. It has my initials on each page and my signature at  
24 the end.

25 Q. So this is your declaration for this case, is that correct?

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Anson - direct

1 A. Yes, ma'am.

2 Q. At the time you signed the declaration, were your  
3 statements truthful and accurate?

4 A. Yes, of course.

5 Q. Is everything in your declaration truthful and accurate as  
6 of today?

7 A. Yes.

8 Q. Do you offer your declaration as your full and complete  
9 direct testimony?

10 A. Yes.

11 MS. MALONEY: Plaintiffs offer Exhibit 6000.

12 THE COURT: Received on the same basis as the others.

13 (Plaintiff's Exhibit 6000 received in evidence)

14 MS. MALONEY: No further questions.

15 CROSS-EXAMINATION

16 BY MR. FRIEDMAN:

17 Q. Mr. Anson, my name is Rick Friedman. I just have a few  
18 questions for you.

19 Is it correct to say that all of the property that you  
20 refer to in your report could be characterized as intellectual  
21 property?

22 A. Yes.

23 Q. Is it also fair to say that all of the intellectual  
24 property referenced in your witness statement is owned by  
25 Chevron Intellectual Property LLC?

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Anson - cross

1 A. As I understand it, it was owned until recently when it was  
2 embargoed.

3 Q. Before it was embargoed, all the property referenced in  
4 your report was owned by Chevron Intellectual Property LLC?

5 A. That's my understanding, yes.

6 Q. And Chevron Intellectual Property LLC is an indirect  
7 subsidiary of Chevron Corporation?

8 A. Yes.

9 Q. What do you mean by indirect subsidiary in your witness  
10 statement?

11 A. Because I am not a lawyer, I cannot describe to you the  
12 legal construct, but it is a subsidiary held through another  
13 subsidiary is my understanding.

14 Q. So what you at least meant in your report was there is at  
15 least one layer of subsidiaries between Chevron Intellectual  
16 Property and Chevron Corporation?

17 A. That was my understanding.

18 Q. None of the property you address in your report is or was  
19 owned by Chevron Corporation, is that correct?

20 A. My understanding is it's all owned by Chevron through  
21 another subsidiary.

22 Q. So is it your understanding then that arm to Chevron  
23 Intellectual Property LLC equals arm to Chevron Corporation?

24 A. Yes. In the sense that, first, if Ford Motor Company held  
25 its trademarks, as it sometimes does, through a subsidiary or

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Anson - cross

1 an indirect subsidiary in Delaware, for example, and those  
2 trademarks were taken from it, Ford Motor Company, e.g. as an  
3 example, would be harmed.

4 Similarly, there is injury here because these assets  
5 are real assets. If you think of them like a building, it's as  
6 if a building has been taken from Chevron LLC, and that  
7 building can no longer be used. Chevron LLC, they can't rent  
8 the building anymore; they can't sell the building anymore;  
9 they can't modify the building anymore; they can't expand the  
10 building anymore; they can't do anything with, quote, the  
11 building anymore.

12 In a similar sense, these assets have been taken, and  
13 they have suffered real damage, sir.

14 Q. When you say "they," you're talking about Chevron  
15 Corporation?

16 A. Yes. Ultimately that's correct.

17 Q. Even though they were taken from a separate legal entity?

18 A. Well, again, I am not an attorney, sir.

19 MS. MALONEY: Objection, your Honor. This is beyond  
20 the scope of his report and it calls for a legal conclusion.

21 THE COURT: I think Mr. Friedman just gave up on it.

22 MR. FRIEDMAN: I just ended it.

23 THE COURT: Thank you.

24 Mr. Gomez.

25 MR. GOMEZ: One moment to confer, please.



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Alvarez - direct

1 Nothing further.

2 THE COURT: Thank you. Mr. Anson, you are excused.

3 (Witness excused)

4 MR. MASTRO: We have one last witness if we have time  
5 today. Our next witness is Dr. Alvarez Grau.

6 VLADIMIRO ALVAREZ GRAU,

7 called as a witness by the plaintiff,

8 having been duly sworn through a Spanish

9 interpreter, testified as follows:

10 MS. LITTLEPAGE: I have some issues with this  
11 witness's testimony. Do you want to hear them?

12 THE COURT: Let's get on with the testimony. I will  
13 hear your issues another time.

14 MS. LITTLEPAGE: It's about his testimony.

15 THE COURT: Tell me what they are.

16 MS. LITTLEPAGE: We have raised these same objections  
17 in our written brief about the expert Elena, but Mr. Alvarez  
18 Grau's entire statement is propensity evidence. Basically, his  
19 point is because President Correa and his government puts  
20 pressure on the judicial system, you can assume or infer that  
21 President Correa put pressure on this particular case and this  
22 particular judge, without any evidence of that.

23 We also have a relevance objection to his testimony  
24 because we, obviously, are here on a RICO case and a New York  
25 State fraud case which has nothing to do with President Correa

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Alvarez - direct

1 who is not named as a co-conspirator.

2 MR. MASTRO: Your Honor, we are a little late in the  
3 day for a witness who has actually put in a witness statement  
4 two and a half years ago. We offer him not only for the  
5 reasons that Sandra Elena was relevant, but there are also  
6 broader implications for his testimony about the lack of  
7 impartiality and independence and honesty within the Ecuadorian  
8 judicial system that I think bear on the issues that they have  
9 raised in the case, and defenses they have raised in the case.

10 So for both reasons, all three reasons, you should  
11 hear Dr. Alvarez Grau's testimony. It's kind of late in the  
12 day to be raising this particular objection.

13 THE COURT: I am certainly going to hear it. I will  
14 decide what, if any, relevance or significance it has down the  
15 road.

16 MR. MASTRO: May I approach the witness?

17 THE COURT: Yes.

18 MR. MASTRO: I am showing the witness what has been  
19 marked as Plaintiff's Exhibit 6200.

20 DIRECT EXAMINATION

21 BY MR. MASTRO:

22 Q. Dr. Alvarez, is this your declaration, your direct  
23 testimony in this case, sir?

24 A. Yes, it is.

25 Q. Can you please turn, sir, to page 68 and tell me whether

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Alvarez - direct

1 that's your signature, sir?

2 A. It is my complete signature on page 68, and each page also  
3 has been initialized by me.

4 Q. Thank you, Dr. Alvarez.

5 Was this true and correct at the time you executed  
6 this declaration on October 29, 2013?

7 A. Yes. All of the matters on which I give my opinion and my  
8 conclusions are truthful, yes, but there are some events that  
9 have caused a personal impact on me, and they are not included  
10 in my statement.

11 Q. These are events that have happened over the past month or  
12 so, sir?

13 A. As of the month of September, September and October, yes.

14 MR. MASTRO: Your Honor, we offer the declaration as  
15 Dr. Alvarez's direct testimony, but I would like to do a brief  
16 supplemental direct on these recent events.

17 MS. LITTLEPAGE: Judge, I know it's late in the day  
18 and it's not my fault. I have noticed this part of Mr. Alvarez  
19 Grau's witness statement. I have asked Chevron to share with  
20 me what these issues are. They did not. So I want to object  
21 because I don't know what is coming, and I don't know that I  
22 should have to hear for the first time from the stand what is  
23 coming.

24 MR. MASTRO: Actually, I did respond to Ms. Littlepage  
25 and explained to her that they are public statements, either

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Alvarez - direct

1 published or broadcast, by government officials about  
2 Dr. Alvarez personally over the last several weeks.

3 THE COURT: I understand in civil cases there is  
4 ordinarily a lot of discovery, but that doesn't mean that  
5 nobody can put in any evidence that the other side, for one  
6 reason or another, hasn't heard before.

7 MS. LITTLEPAGE: I understand.

8 THE COURT: Welcome to trial courtrooms.

9 MS. LITTLEPAGE: If we are now going to hear that  
10 there were public statements about Mr. Alvarez Grau personally,  
11 I would have liked to have had them so I could have looked at  
12 them, seen the context of them, and maybe done some  
13 investigation as to how those came about or what was the  
14 context of them. Instead, I am going to hear it for the first  
15 time and then this witness is going to leave, and I will have  
16 no opportunity to cross-examine him on whatever he is going to  
17 say. I don't know if it's true. It's obviously going to be  
18 hearsay even if it's coming out of newspapers or radio or TV.  
19 I can't cross-examine on that.

20 THE COURT: What precisely is the application and what  
21 is the legal basis for it?

22 MS. LITTLEPAGE: Objection. Hearsay.

23 THE COURT: To what in particular?

24 MS. LITTLEPAGE: To whatever public statements he is  
25 about to discuss that certainly are not part of his expert

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Alvarez - direct

1 report.

2 THE COURT: If you have a hearsay objection, it might  
3 be useful to hear what the question is before you lodge it.

4 MR. MASTRO: Thank you, your Honor.

5 We offer Plaintiff's Exhibit 6200.

6 THE COURT: Received on the same basis as the others.

7 (Plaintiff's Exhibit 6200 received in evidence)

8 BY MR. MASTRO:

9 Q. Dr. Alvarez, you said there are certain recent events in  
10 Ecuador that you wanted to explain that bear on your testimony.  
11 Would you please tell the judge what those are?

12 A. Firstly, in the middle of the month of September, I  
13 received a phone call from a reporter of a newspaper, a  
14 government newspaper, which is El Telegrafo. And in that phone  
15 interview, I was told that the reporter had -- that he had a  
16 privileged list from Chevron, or belonging to Chevron, about  
17 the attorneys, aides, and persons who had given reports in  
18 favor of Chevron, and that in that list Vladimiro Alvarez was  
19 named with first and last name, which made it known to the  
20 entire country that I was giving reports that in some way  
21 disparaged the entire country.

22 Then after a few questions, I was asked if I didn't  
23 care that my report on the lack of respect for the rule of law  
24 in Ecuador, and the lack of the independence of the functions  
25 of the state, as well as the lack of impartiality and the

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1 function of justice in Ecuador, when faced with political,  
2 social and economic pressure, if I didn't care that that would  
3 be prejudicial to the lives of 30,000 indigenous persons and  
4 many other Ecuadorians. To which I answered that when I give  
5 an opinion, or when I reach a conclusion, and do so based on my  
6 deepest conviction, that it is not a concern of mine who will  
7 be benefited or not by that opinion or conclusion, and that it  
8 is based on my deepest conviction.

9 MR. GOMEZ: Objection. Move to strike the witness's  
10 response. With the exception of his statement to the  
11 journalist, all testimony of what the person calling him told  
12 him should be stricken as hearsay.

13 MS. LITTLEPAGE: Objection. Relevance.

14 MR. MASTRO: It's not offered for the truth of what  
15 the person said. It's offered for the fact that was the kind  
16 of statement that was being made to him by the government run  
17 newspaper reporter who contacted him.

18 THE COURT: It's offered for a nonhearsay purpose.  
19 It's received for a nonhearsay purpose. That disposes of Mr.  
20 Gomez. And as to relevance, I will decide in due course.

21 Q. Dr. Alvarez, did there come a time in October of 2013, when  
22 any government official made a public statement in a public  
23 broadcast about you personally?

24 MS. LITTLEPAGE: Objection. Hearsay.

25 MR. MASTRO: It's not offered for the truth. It's

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1 offered for the fact that the statement was made about his  
2 person.

3 A. Must I answer?

4 THE COURT: Yes.

5 A. In effect, the very president of the country, Rafael  
6 Correa, in a press broadcast of radio and other media, in one  
7 segment of his address, referred to the dirty hand of Chevron.  
8 And he mentioned that the citizens of Ecuador should know that  
9 Vladimiro Alvarez is an employee of Chevron, and he is paid by  
10 Chevron to issue reports that cause the country to be  
11 disparaged.

12 MS. LITTLEPAGE: Objection. Relevance.

13 THE COURT: You have my ruling.

14 Q. Dr. Alvarez, what effect, if any, have these incidents over  
15 the past several weeks had on your willingness to testify in  
16 this case?

17 MS. LITTLEPAGE: Objection. Relevance.

18 THE COURT: I have said what I have to say on that  
19 subject earlier, Ms. Littlepage. Your record is preserved.

20 Q. Please tell us, Dr. Alvarez.

21 A. After the president's statements, other government  
22 officials have referred to persons giving reports of various  
23 kinds for Chevron, as well as to lawyers defending Chevron, as  
24 traitors to the fatherland or traitors to the country.

25 And mysteriously, a Web page has also appeared that

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1 goes by [www.losvendepatria.com](http://www.losvendepatria.com). And in the list on that Web  
2 page, which includes attorneys as well as other press  
3 commentators, next to my name and under a photo of me there is  
4 a phrase, which I consider to be offensive, which says, he sold  
5 his country, he sold out his country.

6 The same Web page has then been repeated on Twitter  
7 and Facebook, pointing me out as a traitor to my country, among  
8 others. I, who have worked all my life for the peace of my  
9 country. I, who have received the highest decoration of the  
10 Ecuadorian state, the national merit order and the rank of  
11 Grand Cross, for my work on the commission that brokered the  
12 peace accords after centuries of war with Peru.

13 These events are offensive to my own personal  
14 reputation. They offend my patriotism in the eyes of future  
15 generations and those students who I have taught for the 35  
16 years that I have been a professor. And they could affect me  
17 professionally very seriously if clients of mine, who need to  
18 maintain good relationships with the government, decide to no  
19 longer use my services at this stage of my life.

20 Q. Are you ready to go forward with your testimony, sir?

21 A. Yes, sir.

22 Q. Thank you, Dr. Alvarez. Thank you for being here.

23 MR. MASTRO: I turn over the witness.

24 THE COURT: My next case is ready.

25 The witness will please return at 9:30 on Tuesday



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1 morning. And I need a word with counsel before that.

2 MR. FRIEDMAN: Did you mean tonight?

3 THE COURT: Right now.

4 Dr. Alvarez, you can step down for the moment. We  
5 will see you on Tuesday.

6 Let's address just for a moment a couple of logistical  
7 problems or questions.

8 It seems to me that there needs by the end of this  
9 trial the one indisputably authentic paper set of all the  
10 evidence that's been received in evidence, all the exhibits  
11 that have been received in evidence.

12 Now, I don't think there is actually a big problem,  
13 but some work has got to be done. The court reporters and my  
14 deputy have been keeping track of the exhibits as they come in,  
15 but it seems to me, given everything else that allegedly has  
16 happened in this case, there should be a set of the exhibits in  
17 which at least one lawyer on each side shall have initialed  
18 what they agree is the exhibit that's been received.

19 Now, if we had to reconstruct it in my chambers, we  
20 could do it, but I would be out of business for a considerable  
21 period of time, or at least my staff would.

22 Then there is the matter of the electronic versions  
23 which are indispensable given the volume. And I want a set,  
24 one set at least, that both sides have initialed, physically  
25 initialed. And then I want to make sure you're all up-to-date

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1 with getting me the material. Because some of these witness  
2 statements, Anson and Zygocki, and I think this last witness,  
3 it is conceivable one or more of them were in my chambers, but  
4 I am not sure that they all were.

5 What I am going to propose is that somebody delegated  
6 by each side meet with my deputy tomorrow, you can work out  
7 exactly when, figure out how you're going to get this done so  
8 that by the time we end the testimony it's indisputably done  
9 and any disputes that there may be, and I surely hope there are  
10 none, there is no reason to be any, are in a position to be  
11 resolved then and there. So before you all leave tonight, make  
12 an appointment with my deputy for tomorrow and meet with him  
13 and work out how we are going to accomplish this.

14 How long a cross are we anticipating for this witness?

15 MS. LITTLEPAGE: I am awful with the translation  
16 estimate. I would say 30 minutes if he spoke English. So  
17 maybe 45 with the translation.

18 THE COURT: Mr. Gomez.

19 MR. GOMEZ: Probably 15, 25 minutes.

20 THE COURT: So we should be done with him by 10:30 on  
21 Tuesday.

22 Then other than Dr. Lipton, is that it?

23 MR. MASTRO: He is our last witness next Thursday,  
24 your Honor.

25 The only other proviso on that, your Honor, is it's

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1 not clear to us whether certain of the Ecuadorian witnesses,  
2 like Mr. Tarco, are coming here or not. Whether he comes here  
3 or not might affect whether we will need to call an additional  
4 witness.

5 THE COURT: I understand that.

6 Who are the first four or five defense witnesses?

7 MR. FRIEDMAN: Ms. Hinton will be our first witness.  
8 I am just looking for my list.

9 THE COURT: Her witness statement you better clean up.

10 MS. LITTLEPAGE: I am responsible for her. So I would  
11 like some guidance from the Court. Because Ms. Hinton is a  
12 co-conspirator, and there are specific allegations raised in  
13 the complaint about her that she tried to address in her  
14 witness statement.

15 THE COURT: Mostly what she tried to do is essentially  
16 what Ms. Zygocki tried to do, which is to write a trial brief,  
17 without regard to what she had any personal knowledge of.

18 MS. LITTLEPAGE: Ms. Zygocki is not a named  
19 co-conspirator.

20 THE COURT: Even named co-conspirators have to give  
21 evidence that is admissible and competent.

22 MS. LITTLEPAGE: I believe it makes Ms. Hinton's state  
23 of mind relevant, whereas Ms. Zygocki's state of mind is not  
24 relevant.

25 THE COURT: That's a fair point.

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1 MR. FRIEDMAN: We are going to meet with her again  
2 tomorrow to look at the statement.

3 THE COURT: Clean it up.

4 After Hinton?

5 MS. LITTLEPAGE: Will be Donald Moncayo.

6 Judge, we had a couple of witnesses that we are having  
7 visa appointments today. So when I get home tonight, we should  
8 know whether they can travel over the weekend, but I can't tell  
9 the Court right now because their appointments were while we  
10 were in court today.

11 THE COURT: Who are they?

12 MS. LITTLEPAGE: Ms. Calva.

13 THE COURT: She is going to have to give a deposition  
14 anyway.

15 MS. LITTLEPAGE: As soon as she can get her visa, we  
16 will bring her in.

17 THE COURT: Who is the other one?

18 MS. LITTLEPAGE: We are waiting on Mr. Camacho and  
19 Humberto Piaguaje.

20 THE COURT: He has a visa, right?

21 MR. GOMEZ: No. Javier Piaguaje has a visa. Humberto  
22 Piaguaje, we spoke yesterday about him. I conferred with  
23 co-counsel, and we found that we are not going to be able to  
24 cover Mr. Humberto with Javier's. We considered the problem  
25 with the deposition. In any event, Humberto will sit for a

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1 deposition if necessary. I still have to check the Rule 26  
2 disclosures. My understanding was that Mr. Humberto Piaguaje  
3 was disclosed in the Rule 26 disclosures. In any event, he  
4 will, if necessary, submit to a deposition.

5 THE COURT: I already ordered it, as I remember it.

6 MR. MASTRO: Yes, your Honor.

7 MR. GOMEZ: I am informed that it's not expected he  
8 will be informed of his visa at least until Tuesday or  
9 Wednesday.

10 THE COURT: So he is not going to be here on Tuesday.  
11 So you have got Hinton and Moncayo. Who is next? You have got  
12 on all the rest of them the visa contingency, whether they show  
13 up, and in at least two, maybe three of the cases, depositions.  
14 So none of those are possibly getting on until Thursday.

15 MS. LITTLEPAGE: We are hoping Ms. Calva will be here  
16 over the weekend and she can sit for a deposition on Monday.

17 Mr. Ponce and Mr. Alban both have visas and can  
18 travel.

19 THE COURT: So they will be ready to go on Tuesday if  
20 you need them.

21 MS. LITTLEPAGE: Yes, sir.

22 Then the only other person we have is Mr. Donziger.

23 THE COURT: There was a letter that crossed my desk  
24 today or yesterday from him saying that he would go on the  
25 18th. He is going to be ready to go when you have no more

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1 witnesses to put on, unless you want to call him earlier. I am  
2 not going to adjourn for a couple of days to give him another  
3 break. He has not been here for two days already  
4 consecutively, not that he was obliged to be, and he has got  
5 Friday, Saturday, Sunday and Monday off, six days between his  
6 last appearance in this courthouse and Tuesday. So plenty of  
7 time.

8 MR. MASTRO: Your Honor, I am glad this came up  
9 because Mr. Donziger has not yet provided a written declaration  
10 by Wednesday before the week he is going to testify. So we  
11 have nothing from Mr. Donziger right now and it appears, and we  
12 wrote to counsel last night, it appears he is going to get on  
13 next week.

14 THE COURT: Mr. Friedman, what is the story?

15 MR. FRIEDMAN: Your Honor, the story is that -- well,  
16 part one, I told Mr. Donziger to stay away from court and work  
17 on his declaration.

18 THE COURT: I wasn't faulting him for not being here.

19 MR. FRIEDMAN: He and I have different views about how  
20 long next week it is going to take.

21 THE COURT: Seven days.

22 MR. FRIEDMAN: How long our case will take. I will  
23 have him prepared to get on the stand. I am very conscious of  
24 the need to get a witness statement to the defense before we  
25 put him on so they have a time to look. We did not get a

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1 witness statement last night from Mr. Donziger. If we had to,  
2 we can throw him on the stand tomorrow, but we don't have a  
3 witness statement, and that's the major impediment. I plan to  
4 spend most of tomorrow with him, and all I can tell you is my  
5 number one priority is to get that done. I don't know what  
6 else to say.

7 THE COURT: Well, he has had plenty of advance notice.

8 MR. FRIEDMAN: I know that.

9 THE COURT: Get it done.

10 Anything else tonight?

11 MR. MASTRO: Your Honor, we talked yesterday about  
12 Mr. Alban and Mr. Ponce and Mr. Piaguaje Humberto as witnesses  
13 as to whom we had a motion to preclude their testimony. I only  
14 really want to come back to one of them, which is Mr. Alban.

15 He is a foreign law expert. We have read his  
16 statement. There is absolutely nothing in there that doesn't  
17 go to 44.1 issues. To the extent he has addressed anything  
18 new, if it's his view of Ecuadorian law, it should have been in  
19 the 44.1 statement. We are way past that deadline. He doesn't  
20 need to be called to testify live in the courtroom. If they  
21 are asking for permission to put in his declaration as a 44.1  
22 additional submission, we should have the chance to respond to  
23 the new issue. But otherwise he shouldn't be called to testify  
24 here, and it should have been put in the 44.1 before on the  
25 deadlines your Honor set.

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1 THE COURT: What is the answer to that, folks?

2 MR. FRIEDMAN: Your Honor, there is a distinction  
3 between expert testimony on foreign law and expert testimony in  
4 general. I will tell you what the distinction is. You can  
5 accept it or not accept it.

6 There is expert testimony about laws, statutes  
7 regulations, that sort of thing. Mr. Alban is also offered as  
8 custom and practice in the community. I will just give one  
9 example. There may not be a law that says that briefs get laid  
10 outside the judge's door, but he can address the custom and  
11 practice. Just like there are customs and practices in New  
12 York federal court or New York state court or Alabama state  
13 court, there are informal practices that aren't really issues  
14 that I think are covered under 44.1. So that is what Mr. Alban  
15 would address independent of the foreign law 44.1 issue.

16 THE COURT: So it's only this alleged practice of  
17 leaving papers outside a judge's door, is that it?

18 MR. FRIEDMAN: I think there are a couple of other  
19 things.

20 THE COURT: Tell me what the couple of others are.

21 MR. FRIEDMAN: I am looking at Mr. Booth.

22 THE COURT: By the way, I am glad you raised it and I  
23 am going to digress for a minute because I will forget it  
24 otherwise. Both sides in this case have taken to the practice  
25 of delivering papers directly to my chambers, and it is to



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1 stop. The security practices in the building for a number of  
2 years require that anything that's headed for a judge's  
3 chambers be delivered to the marshal's service. They have to  
4 get their extremely expensive bomb sniffing dog and God knows  
5 what else to review all of this material. I am told, although  
6 I can't verify, that the dog is paid more than the judges. But  
7 it's a very important dog, and we are going to stick to that.  
8 So no more papers to chambers. My staff has the instruction to  
9 accept nothing that doesn't have the marshal service stamp on  
10 it and has not come through the mailroom.

11 Now, let's go on to the other points.

12 MS. LITTLEPAGE: I can tell you that we got  
13 Mr. Alban's statement last night in Spanish. I gave it to the  
14 defendants as soon as we got it. I haven't even read it. It  
15 came in this morning in English and I haven't had a chance to  
16 read it.

17 THE COURT: I am very sorry for that, but Mr. Friedman  
18 was going to tell me what else is in there that falls under the  
19 heading not of law, but of something like the alleged custom  
20 and practice about filing court papers by leaving them on the  
21 floor outside the judge's chambers.

22 Anything else?

23 MR. FRIEDMAN: Yes. Can I just have a minute?

24 MR. MASTRO: Your Honor, while Mr. Friedman is  
25 looking, if he was being offered for some other expert purpose,

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1 the deadline for offering experts was in February.

2 THE COURT: I said it.

3 MR. MASTRO: I know. I just reinforced it. Thank  
4 you, your Honor.

5 THE COURT: I have been reinforced more than I need by  
6 both sides.

7 MR. FRIEDMAN: The three other issues are the custom  
8 of how evidence is evaluated, that is, there is a distinction  
9 between evidence and argument, and how that is customarily  
10 viewed in the profession. How things are cited.

11 THE COURT: It might have been a good idea if he had  
12 talked to counsel on both sides in this case.

13 MR. FRIEDMAN: References to citations. In other  
14 words, attributing or non-attributing citations. So if a judge  
15 cites something, what is the custom of citation?

16 THE COURT: Is he a judge?

17 MR. FRIEDMAN: I don't think he is a judge. I think  
18 he is a law professor and a lawyer.

19 And the final issue has to do with the lottery system,  
20 the lottery system for the appellate panels. There is law on  
21 that, but then also how it is customarily --

22 THE COURT: How would he know how it is customarily?

23 MR. FRIEDMAN: I will have to ask him. I think he  
24 teaches civil procedure. I don't want to make representations  
25 to the Court I don't know about, but what I am telling you is

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1 those are the categories that I understand that would be  
2 independent of sort of foreign law 44.1.

3 THE COURT: Do you have anything to say tonight on  
4 this or no?

5 MR. MASTRO: Just, your Honor, even that last subject,  
6 he talks about different provisions in Ecuadorian law. I  
7 understand the distinction that Mr. Friedman is trying to make,  
8 but I don't think it is availing. It's either a 44.1 foreign  
9 law expert, or if he was supposed to be on for some other  
10 purpose, it's way untimely. As I read his declaration, it  
11 reads all 44.1 and it's untimely to offer it for anything else.

12 Again, your Honor, we are not saying -- if they are  
13 asking to put in something out of time on the 44.1 without  
14 permission, and we had the opportunity to respond to it, so be  
15 it, but they shouldn't be allowed to call the witness live  
16 under these circumstances.

17 THE COURT: See if you can work this out tonight.

18 MR. MASTRO: Certainly, your Honor.

19 I also wanted to give you thumb drives of word  
20 searchable versions of all of our witness declarations.

21 THE COURT: I want to be sure that there is no  
22 objection to this.

23 Anybody got a problem about that?

24 MR. MASTRO: They are word searchable versions of the  
25 witness statements so that they can be searched.

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1 THE COURT: The witness statements and anything else?

2 MR. MASTRO: This is just relating to the witness  
3 statements.

4 MR. FRIEDMAN: As long as we get a copy as well.

5 MR. MASTRO: I brought them for everybody.

6 MR. FRIEDMAN: No objection, your Honor.

7 THE COURT: Mr. Gomez?

8 MR. GOMEZ: No objection, your Honor.

9 THE COURT: You have got a free word searchable thing  
10 from Chevron.

11 We thank you.

12 MR. FRIEDMAN: I brought gifts as well. You and your  
13 clerks might enjoy this. That's all I have got.

14 THE COURT: I rather imagine I will.

15 (Adjourned to November 12, 2013, at 9:30 a.m.)  
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## PLAINTIFF EXHIBITS

Exhibit No.	Received
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6407 . . . . .1949

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6200 . . . . . 2008

DEFENDANT EXHIBITS

Exhibit No.	Received
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